



First Session—Twenty-sixth Parliament
1963

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

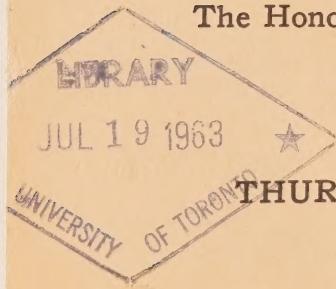
To whom was referred the

Bill S-16, An Act to authorize the Construction and Maintenance of a Bridge and Tunnel across the St. Lawrence River at the Boucherville Islands, in the Province of Quebec.

The Honourable A. K. HUGESSEN,
Chairman.

JUL 19 1963

THURSDAY, JUNE 27, 1963.



WITNESSES:

Mr. G. T. Clarke, Chief Engineer, Development Engineering Branch;
Mr. W. W. Perrie, Engineer in charge of Federal Contribution on
Trans-Canada Highway; Mr. W. R. Manning, Chief Engineer, Marine
Division, all of the Department of Public Works.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

THE STANDING COMMITTEE
on
TRANSPORT AND
COMMUNICATIONS

The Honourable
ADRIAN K. HUGESSEN,
Chairman

The Honourable Senators

Baird,	Fournier	Méhot,
Beaubien (<i>Provencher</i>),	(<i>Madawaska-Restigouche</i>),	Molson,
Bishop,	Gershaw,	Monette,
Bouffard,	Gouin,	Paterson,
Bradley,	Haig,	Pearson,
*Brooks,	Hayden,	Power,
Buchanan,	Hollett,	Quart,
Campbell,	Horner,	Reid,
Connolly (<i>Halifax North</i>)	Hugessen,	Robertson (<i>Shelburne</i>),
(<i>Halifax-Nord</i>),	Isnor,	Roebuck,
Connolly (<i>Ottawa West</i>)	Jodoïn,	Smith (<i>Kamloops</i>),
(<i>Ottawa-Ouest</i>),	Kinley,	Smith (<i>Queens-Shelburne</i>),
Croll,	Lambert,	Stambaugh,
Dessureault,	Lefrançois,	Taylor (<i>Westmorland</i>),
Dupuis,	*Macdonald (<i>Brantford</i>),	Thorvaldson,
Emerson,	McCutcheon,	Veniot,
Farris,	McGrand,	Vien,
	McKeen,	Welch,
	McLean,	Woodrow—(50).

50 members (Quorum 9)

*Ex officio member

LE COMITÉ PERMANENT
des
TRANSPORTS ET
COMMUNICATIONS

L'honorable
ADRIAN K. HUGESSEN,
président

Les honorables sénateurs

Méthot,
Molson,
Monette,
Paterson,
Pearson,
Power,
Quart,
Reid,
Robertson (*Shelburne*),
Roebuck,
Smith (*Kamloops*),
Smith (*Queens-*
Shelburne),
Stambaugh,
Taylor (*Westmorland*),
Thorvaldson,
Veniot,
Vien,
Welch,
Woodrow—(50).

50 membres (Quorum 9)

*Membre d'office

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, June 12th, 1963.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Bouffard, seconded by the Honourable Senator Macdonald, P.C., for second reading of the Bill S-16, intituled: "An Act to authorize the Construction and Maintenance of a Bridge and Tunnel across the St. Lawrence River at the Boucherville Islands, in the Province of Quebec".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

THURSDAY, June 27, 1963.

The Standing Committee on Transport and Communications to whom was referred the Bill S-16, intituled: "An Act to authorize the Construction and Maintenance of a Bridge and Tunnel across the St. Lawrence River at the Boucherville Islands, in the Province of Quebec", have in obedience to the order of reference of June 27, 1963, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

ADRIAN K. HUGESSEN,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, June 27, 1963.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.30 A.M.

Present: The Honourable Senators Hugessen, Chairman; Bouffard, Brooks, Buchanan, Connolly (*Halifax-North*), Croll, Dessureault, Fournier (*Madawaska-Restigouche*), Hollett, Jodoin, Lambert, McCutcheon, McGrand, McLean, Méthot, Pearson, Quart, Smith (*Kamloops*), Smith (*Queens-Shelburne*), Stambaugh, Veniot, Welch, and Woodrow—23.

In attendance: Mr. E. Russell Hopkins, Q.C., Law Clerk and Parliamentary Counsel. The Official Reporters of the Senate.

Bill S-16, An Act to authorize the Construction and Maintenance of a Bridge and Tunnel across the St. Lawrence River at the Boucherville Islands, in the Province of Quebec, was read and considered clause by clause.

On Motion of the Honourable Senator Lambert, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 in French of the Committee's proceedings on the said Bill.

Heard in explanation of the Bill were: Mr. G. T. Clarke, Chief Engineer, Development Engineering Branch, Dept. of Public Works; Mr. W. W. Perrie, Engineer in charge of Federal Contribution on Trans-Canada Highway; Mr. W. R. Manning, Chief Engineer, Marine Division.

It was Resolved to report the said Bill without any amendment.

At 11.00 A.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.



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THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS EVIDENCE

OTTAWA, Thursday, June 27, 1963.

The Standing Committee on Transport and Communications, to which was referred Bill S-16, to authorize the construction and maintenance of a bridge and tunnel across the St. Lawrence River at the Boucherville Islands, in the Province of Quebec, met this day at 10.30 a.m.

Hon. A. K. HUGESSEN (*Chairman*) in the Chair.

On motion duly moved and seconded, it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On motion duly moved and seconded, it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we have a quorum. The bill before us for consideration is Bill S-16, to authorize the construction and maintenance of a bridge and tunnel across the St. Lawrence River at the Boucherville Islands, in the province of Quebec. This is a Government bill; it is submitted by the Department of Public Works. Since it concerns a matter of federal navigation, I have a message here to the effect that the Department of Transport, which is in charge of navigation, states that the Minister of Transport has no objection to the bill. I understand that Mr. W. J. Manning is present for the Department of Transport. Do you confirm that, Mr. Manning, that as far as the Department of Transport is concerned, the department has no objection to the bill?

Mr. W. J. Manning, Director, Marine Works Branch, Department of Transport:
Yes, Mr. Chairman.

The CHAIRMAN: Two witnesses are available for us this morning, and I am glad to see that they have produced a map so that honourable senators will have a chance to see where the proposed bridge and tunnel are to be located. The two witnesses are: Mr. G. T. Clarke, Chief Engineer in the Development Engineering Branch of the Department of Public Works; and Mr. W. W. Perrie, Engineer-in-Charge of Federal Contribution, Trans-Canada Highway. In that connection, I understand this bridge and tunnel are to form part of the Trans-Canada Highway.

If honourable senators are willing, shall we ask Mr. Clarke to give the necessary explanation to us?

Hon. SENATORS: Agreed.

Mr. G. T. Clarke, Chief Engineer, Development Engineering Branch, Department of Public Works: Under Schedule "A" of the Trans-Canada Highway Agreement with the province of Quebec, the designated route within the province reads as follows:

.... to a point north-east of St. Hyacinthe, hence westerly by a new location to a crossing of the St. Lawrence River over Boucherville Islands, thence south-westerly through Montreal Island.

As you will see on the plan before us, the Trans-Canada Highway goes from the south shore across the Boucherville Islands to where I am pointing, and thence south-westerly through Montreal Island, and here is the location of the proposed bridge. The government of the province of Quebec retained the services of two consulting firms to carry out studies on alternative crossings at the Boucherville Islands. After reviewing the studies, that government decided on a tunnel and bridge crossing, and retained a joint venture consisting of Brett and Ouellette, Lalonde and Valois and Per Hall and Associates, under the name of "Société d'Ingénieurs-conseils de Boucherville", to undertake the preparation of plans and specifications for a tunnel crossing under the main channel and a bridge over the south channel, between Longue Pointe, in the city of Montreal, and the city of Jacques Cartier on the south shore.

The plans for the proposed crossing have been reviewed by the following, and in their opinion the crossing will not interfere with navigation, nor will it affect the water levels in Montreal harbour on its completion:

G. T. Clarke, Chief Engineer, Development Engineering Branch, Department of Public Works; W. J. Manning, Director of Marine Works Branch, Department of Transport; G. Millar, Chief, Harbours and Rivers Engineering Branch, Department of Public Works; L. R. Stratton, Chief Engineer, National Harbours Board; P. Kuhring, Chairman, Montreal Harbour Planning Committee; H. Land, Chief Engineer, St. Lawrence Ship Channel.

The crossing will be designed for six lanes of traffic, using a design speed of sixty miles per hour and loading of H25—S20. The capacity will be 4,500 cars per hour per lane at maximum speed and 6,000 cars per hour per lane at a reduced speed. This appears to be an inconsistency but as speed decreases the distances between cars decreases so actually you move more cars at a slow speed than at a high speed.

Ice conditions have been investigated and, in accordance with the consultant's findings, the effect on the permanent works is negligible and too small to be measured. During the construction period a certain raising of the water level upstream of the crossing may occur during the spring flood periods of between 0.3 and 0.4 feet. However, even under very severe assumptions it is not indicated that any damage will occur to property or hindrance to navigation.

In the shallow water bordering the Boucherville Islands on the main channel side there is clogging by ice for most of the winter. Hence the ventilating building and access dam will therefore practically not affect water and ice flow. In the south channel where piers and a bridge are to be built, ice cover forms in the early winter and is not affected by ice movement in the main channel. The presence of the bridge piers in the south channel will in no way affect ice flow in the river during the spring breakup.

On the basis of present conditions and available data on past performance of the St. Lawrence River, the two critical construction seasons for 1963-64 and 1964-65 will be periods of low water flow. The St. Lawrence River appears to follow an up-and-down flow cycle, a high flow and then it drops down to a low flow, and from past performance figures we appear to be now in a period of low flows and this will be the best period for construction.

Under existing conditions the width of the main channel crossing is 1,500 feet with a channel depth of 35.0 feet below low water level. The proposed plan provides for a future channel width of 2,400 feet with 40 feet of water at low water level. In addition, the top of the tunnel will be a further 10 feet below the grade of 40 feet below low water, that is to say we have an additional 10 feet of cover over the tunnel before the 40-foot level below low water level.

The estimated cost of the project is \$50 million, and under the Trans-Canada Highway agreement with the province of Quebec, Canada will share only in the cost of two lane facilities.

I might perhaps explain this best by saying that if a six-lane bridge is built we examine the plans. The sidewalks are common, whether six lanes or two lanes, so the sidewalk is fully shareable. Due to ice conditions the piers are designed to withstand a heavy ice shove so that you may have the same size piers for a six- or a two-lane bridge. Thus the piers are shareable in full.

On the proposed bridge and tunnel it is estimated that the shareable portion will approximate 60 per cent. This section of highway comes under the act, and it is on a 90-10 section that Canada will be sharing 90 per cent of 60 per cent of the cost of the project.

Mr. Chairman, I have an additional map here if the committee would like me to show it.

The CHAIRMAN: Yes, Mr. Clarke, I am sure the committee will be interested.

Mr. CLARKE: Looking at this map, Mr. Chairman, the initial construction will consist of building a dam off Boucherville Islands. In this area the pre-casting of the tunnel sections will be done. The approach tunnel will be built in the dry. Then the sections under the main channel will be built in a trench under water by the use of precast sections. These are the two ventilating towers, one on the north shore and one off the south shore. This section of the temporary cofferdam will revert to the National Harbours Board, which is interested in acquiring this in connection with the development of the Montreal harbour.

The ventilating towers are here and here. The present channel has a depth of 35 feet below water level and the future channel could be dredged to 40 feet below low water level over the tunnel.

The CHAIRMAN: So in effect, Mr. Clarke, you are providing not only for an increased width in the navigation channel but for an increased depth.

Mr. CLARKE: That is right.

Senator FOURNIER (*Madawaska-Restigouche*): You told us that this will be a six-lane bridge. Will there be three lanes on each side with a separation in the middle?

Mr. CLARKE: Yes, there will be three lanes on each side of a central wall.

Senator FOURNIER (*Madawaska-Restigouche*): And you will have a wall in the centre of the tunnel?

Mr. CLARKE: The tunnel is to be constructed by sinking the precast sections which are to be placed end to end on the bottom. This is the same method of construction that was used at Deas Island, British Columbia, and the Chesapeake Bay bridge and tunnel now being constructed in the United States. Also Hampton Roads in the United States was constructed by this method.

Senator SMITH (*Kamloops*): Will the construction of this bridge and tunnel do anything to relieve the traffic problem related to the World's Fair to be held in Montreal in 1967?

Mr. CLARKE: It would, from its location, move a lot of traffic off the downtown access bridges to Montreal.

Senator PEARSON: How far is the construction site from the centre of the city?

Mr. MANNING: It is two miles down the river. This is off the Longue Pointe church.

Senator PEARSON: How long will it be before the city moves out that far?

Mr. MANNING: This is just about where the big oil refineries are located in Montreal, and the area is pretty well built up there now.

Senator BROOKS: Will the same proportion of payment as between the federal and provincial governments be followed on the bridge as on the tunnel?

Mr. CLARKE: It works out about the same.

Mr. PERRIE: It may be somewhat less than on the tunnel. The factors that enter into the question of shareability on the bridge may be different from those entering into that question on the tunnel. As Mr. Clarke said, the piers and foundation are not increased to the same extent compared to the deck so there is a greater percentage on piers shareable than would be in the case of the deck, but in the tunnel there is a more direct proportion.

Senator BROOKS: How will the cost of the tunnel compare with the cost of the bridge? You say it is estimated the bridge will cost \$50 million. What will it be for the tunnel?

Mr. PERRIE: We have not yet got the final estimate on that. It is still in the design stage and until they have concluded that design we can have no exact estimate of the cost. \$50 million is as near as we can give it at the present time, and that includes the approaches.

Senator LAMBERT: Will there be any toll charges on this bridge?

Mr. CLARKE: No.

Senator LAMBERT: It will be a free bridge?

Mr. CLARKE: Yes.

Senator BOUFFARD: I was wondering what would be the nature of the highway to the bridge. Is it a four-lane highway?

Mr. PERRIE: I beg your pardon?

Senator BOUFFARD: Will the Trans-Canada highway, when it comes to the bridge, be a four-lane highway?

Mr. PERRIE: They are building four and six lanes in some locations. I imagine that for some distance off each end it will be a six-lane highway.

Senator BOUFFARD: The approach to the bridge will be six lanes?

Mr. PERRIE: Yes, and it will funnel into four farther away.

Mr. CLARKE: However, the Government of Canada shares only in two lanes. Here on the map is the location of the bridge to be constructed across the south channel, and it has 25 feet clearance above high water, and 220 feet for width. The piers are designed so that if at some later date it is necessary to make this a lift span it can be done without changing the whole bridge. Only one span changes. Provision is made should any future development require a lift span.

The CHAIRMAN: If ever they wish to use the south channel for navigation purposes?

Mr. CLARKE: They can use it for certain purposes, up to 25 feet. Instead of raising the whole bridge you would have only one span to lift. This is a provision for the future.

Senator STAMBAUGH: What is the difference between a ventilating tower and an ordinary tower?

Mr. CLARKE: The ventilating tower is designed to change the air in the tunnel, due to carbon monoxide being given off by automobiles. There is a certain amount of ventilation afforded by the movement of cars, but at particularly high-traffic density you have to use artificial ventilation to keep the carbon monoxide down.

Senator BOUFFARD: What will be the depth of the tunnel?

Mr. CLARKE: Forty feet of water, and 10 feet of earth cover over the top of the tunnel, so the top of the tunnel will be 50 feet from the surface of the water.

Senator LAMBERT: What is the formation of the bed of the river there?

Mr. CLARKE: It is a glacial till.

Senator BOUFFARD: Will the tunnel touch the bottom?

Mr. CLARKE: It will sit on the sand bed, and back fill will be placed over it.

Senator SMITH (*Queens-Shelburne*): Are these plans developed by the province of Quebec, or are they a joint effort?

Mr. CLARKE: This is all done by the province of Quebec.

Senator SMITH (*Queens-Shelburne*): These are plans developed by the Department of Public Works in the province of Quebec?

Mr. CLARKE: By their consulting engineers. They are responsible for the plans, and then they are reviewed by the federal Department of Public Works.

Senator SMITH (*Queens-Shelburne*): You have looked these over and you are in agreement that this is satisfactory from all standpoints?

Mr. CLARKE: Yes.

The CHAIRMAN: The bill says that it is authorizing the province of Quebec to build the works, provided the plans themselves are approved by the Governor in Council.

Senator LAMBERT: There will be supervision by Public Works during construction?

Mr. CLARKE: We carry on supervision, to ensure that the work we are paying for is performed in accordance with the plans and specifications.

Senator BROOKS: This is on the principle of the construction of the Trans-Canada highway?

Mr. CLARKE: Yes, the same principle.

Senator PEARSON: They say the channel is now 1,500 feet, and it is anticipated it will be extended to 2,400 feet. Is this already taking place in the river bed now?

Mr. CLARKE: No.

Senator PEARSON: This is just making provision for the future?

Mr. CLARKE: Yes.

Mr. MANNING: This is between the wharf on the north side and the ventilating tower, to make sure no ice jam occurs in that area. You have 40 feet of water on top of the tunnel. This is from the north shore to the ventilating tower. The other tower on the north side is inland from the shore of the river.

Senator FOURNIER (*Madawaska-Restigouche*): How many years will it take to complete the project?

Mr. CLARKE: Four years, I think.

Mr. MANNING: They are planning for 1967.

The CHAIRMAN: Will it be ready in time for the World's Fair in Montreal?

Mr. CLARKE: If they can get started this fall and are not held up.

The CHAIRMAN: I do not think we will hold you up.

Mr. CLARKE: It is for 1966, but I would guess 1967.

The CHAIRMAN: That is important, because if there is to be any relief of traffic congestion for the World's Fair, this project should be ready for traffic before the World's Fair begins.

Are there any further questions, honourable senators? Shall we consider the bill clause by clause?

Shall section 1 carry?—Short title?

Carried.

The CHAIRMAN: Shall section 2, construction of bridge authorized, carry?
Carried.

The CHAIRMAN: Shall section 3, construction of tunnel authorized, carry?
Carried.

The CHAIRMAN: Shall section 4(1), plans and drawings to be submitted,
carry?

Carried.

The CHAIRMAN: Shall section 4(2), approval of plans and drawings prior
to commencement, carry?

Carried.

The CHAIRMAN: Shall section 5(1), regulations, and section 5(2), compli-
ance carry?

Carried.

The CHAIRMAN: Shall the preamble carry?

Carried.

The CHAIRMAN: Shall the title carry?

Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Senator BOUFFARD: Before reporting the bill, Mr. Chairman, I would like
to ask a question. What is the reason for seeking approval of a tunnel in this
bill? Is it definitely necessary?

The CHAIRMAN: I think it was explained on second reading that under
the Navigable Waters Protection Act no works can be done on the St. Lawrence
River without a special act of Parliament.

Senator BOUFFARD: I do not think that is the wording of the act. I think
the wording of the act is that no bridge can be constructed without authoriza-
tion, but it does not mention anything about a tunnel.

The CHAIRMAN: This project includes a bridge.

Senator BOUFFARD: It provides for a bridge on one side, and for a tunnel
on the other side.

Senator LAMBERT: The bed of the river would be provincial property.

Senator BOUFFARD: I suppose it is a measure of protection.

Mr. CLARKE: We have to come and have a bill passed for the bridge. You
could have built the tunnel under the Navigable Waters Act, but they
considered it preferable to put the whole project in as one and have an act
passed covering the whole project instead of doing it separately.

Senator BOUFFARD: Thank you, Mr. Chairman.

The CHAIRMAN: Shall I report the bill without amendment?

Carried.

The committee thereupon adjourned.



First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the
Bill S-37, An Act to amend the Carriage by Air Act.

The Honourable A. K. HUGESSEN,
Chairman.

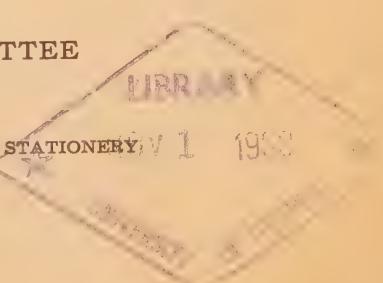
THURSDAY, OCTOBER 17, 1963.

WITNESSES:

Mr. E. A. Driedger, Q.C., Deputy Minister of Justice; Professor A. B. Rosevear, Q.C., of the Law Faculty of McGill University, Montreal, Quebec; Mr. Ian E. McPherson, General Counsel of Trans-Canada Air Lines, Montreal, Quebec; Mr. Jacques Fortier, Q.C., Counsel for the Department of Transport.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963



THE STANDING COMMITTEE
on
TRANSPORT AND
COMMUNICATIONS
The Honourable
ADRIAN K. HUGESSEN,
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The Honourable Senators

Baird,	Fournier	Méthot,
Beaubien (<i>Provencher</i>),	(<i>Madawaska-Restigouche</i>),	Molson,
Bishop,	Gershaw,	Monette,
Bouffard,	Gouin,	Paterson,
Bradley,	Haig,	Pearson,
*Brooks,	Hayden,	Power,
Buchanan,	Hollett,	Quart,
Campbell,	Horner,	Reid,
Connolly (<i>Halifax North</i>)	Hugessen,	Robertson (<i>Shelburne</i>),
(<i>Halifax-Nord</i>),	Isnor,	Roebuck,
Connolly (<i>Ottawa West</i>)	Jodoin,	Smith (<i>Kamloops</i>),
(<i>Ottawa-Ouest</i>),	Kinley,	Smith (<i>Queens-Shelburne</i>),
Croll,	Lambert,	Stambaugh,
Dessureault,	Lefrançois,	Taylor (<i>Westmorland</i>),
Dupuis,	*Macdonald (<i>Brantford</i>),	Thorvaldson,
Farris,	McCutcheon,	Veniot,
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	McLean,	Woodrow—(49).

49 members (Quorum 9)

*Ex officio member

LE COMITÉ PERMANENT
des
TRANSPORTS ET
COMMUNICATIONS
L'honorable
ADRIAN K. HUGESSEN,
président
Les honorables sénateurs

49 membres (Quorum 9)

*Membre d'office

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 9th, 1963.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Macdonald, P.C., seconded by the Honourable Senator Vaillancourt, for second reading of the Bill S-37, intituled: 'An Act to amend the Carriage by Air Act'.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald, P.C., moved, seconded by the Honourable Senator Vaillancourt, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 11.30 A.M.

Present: The Honourable Senators Hugessen, *Chairman*; Baird, Beaubien (*Provencher*), Campbell, Dupuis, Gouin, Horner, Isnor, Kinley, Lambert, Le-françois, McCutcheon, McLean, Methot, Molson, Reid, Thorvaldson, Veniot and Woodrow. 19.

In attendance: Mr. E. Russell Hopkins, Q.C., Law Clerk and Parliamentary Counsel. The Official Reporters of the Senate.

Bill S-37, An Act to amend the Carriage by Air Act was read and considered.

On Motion of the Honourable Senator Reid, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Heard in explanation of the Bill were: Mr. E. A. Driedger, Q.C., Deputy Minister of Justice; Professor A. B. Rosevear, Q.C., of the Law Faculty of McGill University, Montreal, Que.; Mr. Ian E. McPherson, General Counsel of Trans-Canada Air Lines, Montreal, Que.; Mr. Jacques Fortier, Q.C., Counsel for the Department of Transport.

In attendance but not heard were: Mr. Gerald Morisset, Vice Chairman of the Air Transport Board and Mr. J. F. Clark, Q.C., General Counsel of Canadian Pacific Air Lines, Limited.

On Motion of the Honourable Senator Thorvaldson, it was Resolved to report the said Bill without any amendment.

At 12.45 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, October 17th, 1963.

The Standing Committee on Transport and Communications to whom was referred the Bill S-37, intituled: "An Act to amend the Carriage by Air Act", have in obedience to the order of reference of October 9th, 1963, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

A. K. HUGESSEN,
Chairman.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS EVIDENCE

OTTAWA, Thursday, October 17, 1963.

The Standing Committee on Transport and Communications to which was referred Bill S-37, an Act to amend the Carriage by Air Act, met this day at 11.30 a.m.

Senator A. K. HUGESSEN (*Chairman*), in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: This bill, honourable senators, received considerable discussion on second reading in the Senate, and we have a number of witnesses ready to appear on the bill, whose names I will mention to you. There is Mr. E. A. Driedger, Deputy Minister of Justice; Mr. Gerald Morisset, Vice Chairman of the Air Transport Board; Mr. Ian E. McPherson, General Attorney of Trans-Canada Air Lines; Mr. J. F. Clark, General Attorney of Canadian Pacific Air Lines Limited; and Mr. Jacques Fortier, Counsel for the Department of Transport.

Honourable senators will recall that in the debate on second reading a number of honourable senators expressed the desire to have the benefit of the advice of Professor Rosevear who, as honourable senators recall, was Director of the Institute of Air and Space Law in Montreal for a number of years, and is still connected with that organization and is, I think without question, the authority in Canada on international air law. I am very glad to be able to tell the committee that Professor Rosevear is with us this morning and will be able to give us the benefit of his advice.

I wonder how we had better proceed with this bill. Honourable senators will recall there is a constitutional question involved as to the right of this Parliament to enact this legislation, and I wondered whether it would not be best if we started off with the question of constitutionality and asked Mr. Driedger to advise us on that, and then, after we have dealt with that, we could go on to the business of the general purport of the bill. Does that procedure meet with the approval of honourable senators?

Hon. SENATORS: Agreed.

The CHAIRMAN: Mr. Driedger, would you be good enough to come forward.

I do not want, in any way, to interfere with your presentation, Mr. Driedger, but I do have before me a copy of quite a short opinion you gave to the Leader of the Senate, Senator Macdonald (*Brantford*), on this subject of the constitutionality of this bill on October 8th. I wondered whether it would not be best if Mr. Driedger were to read this opinion to us, which is quite short, with such additional comments as he may care to make. That will be his opinion, and we will be able to question him on it.

Senator KINLEY: Whose opinion is this?

The CHAIRMAN: The opinion of Mr. Driedger, Deputy Minister of Justice.

Senator KINLEY: You yourself gave an opinion on second reading, Mr. Chairman.

The CHAIRMAN: Yes, a lot of us did, but we are only senators: we are not in the Department of Justice.

Mr. E. A. Driedger, Deputy Minister of Justice: Honourable senators, on October 8 last, I wrote to the honourable senator W. Ross Macdonald as follows:

Mr. Wylie informs me that you wish to have some information on the jurisdiction to legislate in relation to aeronautics.

In the reference re The Regulation and Control of Aeronautics in Canada (1932) A.C. 54, the Judicial Committee of the Privy Council held that under section 132 of the British North America Act the Parliament and Government of Canada had all powers necessary or proper for performing the obligations of Canada under the 1919 international Convention relating to the regulation of Aerial Navigation. Lord Sankey, who delivered the judgment in that case, went on to say that "aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion". This decision is therefore authority for the proposition that quite apart from the treaty-implementing power of Parliament under section 132, the subject of aeronautics lies within the exclusive legislative competence of Parliament.

In a subsequent decision, Attorney General for Ontario v. Canada Temperance Federation (1946) A.C. 193, Lord Simon, at page 205, confirmed that the Aeronautics case decided that aeronautics goes beyond local provincial concern or interests and must from its inherent nature be the concern of the Dominion as a whole.

Finally, in Johannesson v. Rural Municipality West St. Paul (1951) 1 S.C.R. 292, the Supreme Court of Canada held that the whole subject of aeronautics is within the exclusive jurisdiction of Parliament.

The matters dealt with in the Carriage by Air Act and the proposed amendments thereto are, I suggest, clearly in relation to aeronautics and therefore within the exclusive legislative competence of Parliament.

I might perhaps just add this, and say that the position now under these decisions is exactly the same as if the words "aeronautics" or "aerial navigation", or some appropriate expression like that, were inserted in section 91 of the British North America Act in the enumerated heads.

Senator GOBIN: If you will allow me, the question raised in the Senate was concerning the fact that liability is a matter of civil rights and property. I must say that is not my opinion, but I want to call the attention of the committee to what has been discussed in the Senate, and I would ask if the witness would comment on that point. Air navigation, so to speak, is within the jurisdiction of the Canadian Parliament, and the contract and liability for the transportation of the individual is also within the provincial jurisdiction.

Mr. DRIEDGER: Perhaps I could try to answer that by referring to other legislation in the navigation field. Take, for example, navigation in shipping which is an enumerated head of section 91 and, therefore, within Parliament's exclusive jurisdiction. We find in the Canada Shipping Act, for example, Part XII, which deals with civil liability for collisions, with the limitation of liability, and it also deals with the liability of carriers by water. In the Transport Act tolls and tariffs of water carriers are regulated. Under the

Railway Act, again, you have the regulation of tolls and tariffs, but also a number of sections which deal with the limitation of the carrier's liability. It is true that in the ordinary case, contracts and matters of that kind fall within the jurisdiction of the provincial legislature, but when they are in relation to a subject matter over which Parliament has jurisdiction, then Parliament has jurisdiction with reference to that as well.

I think perhaps you could try to imagine what the situation would be if these were regulated by the provinces. You could then have ten different laws.

An airplane flying to Canada, and not knowing where it was going to land, could not possibly know what laws it had to comply with. It is not a matter that could be effectively regulated by provincial legislation at all.

Senator METHOT: What about expropriation of property for example?

Mr. DRIEDGER: I don't know whether I quite understand your question, honourable senator, but there is authority under the Railway Act to expropriate property.

The CHAIRMAN: Even though it is an interference with property and civil rights.

Any further questions of Mr. Driedger on the constitutional aspect?

Senator KINLEY: Did I hear the gentleman saying 1919 or 1929?

Mr. DRIEDGER: The Convention of 1919.

Senator KINLEY: This document here is in relation to 1929.

Mr. DRIEDGER: But the decision of the Privy Council was in relation to the 1919 convention.

Senator KINLEY: But this convention which controlled the bill was in 1929.

Mr. DRIEDGER: That is later but it covers the same subject matter.

Senator REID: Do you know how many countries signed this?

Mr. DRIEDGER: Perhaps some of the members of the department can answer that question.

Mr. FORTIER: I can answer that question.

Senator FLYNN: May I put a question? I would like Mr. Driedger to give us a general rule of how far can we go into civil rights and property when Parliament is dealing with a question which is within its jurisdiction.

Mr. DRIEDGER: I hope you won't consider my answer offensive or facetious, but I must say we can go as far as the courts will allow us to go. The question is, is this in relation to a subject matter assigned to Parliament? It may be the subject of dispute. If the courts say, yes, in pith and substance, it is in relation to something assigned to Parliament, and not in relation to property or civil rights, then we would say Parliament had jurisdiction.

Senator FLYNN: I thought the jurisprudence was that you could go as far as the object of the legislation required.

Mr. DRIEDGER: Yes. Various expressions have been used, but I think the real test is, is it in pith and substance in relation to that matter.

Senator REID: May I ask if each country makes its own regulations as to its liability. We are increasing our own liability here. Does each country settle its own liability?

Mr. DRIEDGER: The officials of the department may be able to answer that better than I.

The CHAIRMAN: We are really considering the constitutional aspect at the moment. Are there any further questions on the constitutional aspect?

Thank you, Mr. Driedger.

Gentlemen, shall we proceed to consideration of the bill itself and in particular to The Hague Protocol of 1955 which appears as a schedule to the bill? I wonder at this stage if honourable senators would like to hear Professor Rosevear on The Hague Protocol.

Senator THORVALDSON: I think since he is here we should hear him.

The CHAIRMAN: Perhaps he would give us his general views starting with the Warsaw Convention of 1929 to which this country became a party in 1939, and The Hague Protocol to which we are now becoming a party.

Professor ROSEVEAR: Mr. Chairman, honourable senators, I might say that I am happy to be here today, provided of course I can throw some light on this rather difficult and complicated subject. I might add that this is the first occasion, I think, when any parliamentary or governmental body in Ottawa has asked for some enlightenment from the Institute of Air and Space at McGill University. I should perhaps say that this institute has been in existence since 1951 and has had graduate students from all over the world, and some of our graduates are now members of the legal committee of the International Civil Aviation Organization. I might also mention in passing that one of those present here today, Mr. McPherson, is a graduate of the institute. The result is that when there is a meeting of the legal committee of ICAO in Montreal, we have a McGill reunion.

I think you all know the Warsaw Convention itself was set up by a committee of experts in 1929 at a diplomatic conference in Warsaw, Poland. That is where it received its name. I might add that some of the gentlemen who took part in that conference in Warsaw are still living and some of them are taking part in the deliberations of the International Civil Aviation Organization, such as K. M. Beaumont of the United Kingdom, who is co-author of the leading book on air law, Professor Ambrosini of Italy, and Maitre André Garnault of Paris.

I mention these names because these gentlemen are all authorities on air law, and they were among those who drafted the Warsaw Convention.

Perhaps the best thing to do would be to try to imagine for the moment, if we can, what the situation would be in international air law if there were no Warsaw Convention. In that case, carriers would be free in some jurisdictions in the world to set very low limits of liability, or even to deny liability entirely.

As the law of the place where an accident occurs would be the law which our courts, and the courts of a great many other states, would apply to an action in tort for damages resulting from injuries to passengers, we would find that we would have great difficulty in finding out what law applied to a particular case.

Now, in Canada that problem has been solved completely because under the Carriage by Air Act, the second schedule, you will find that in the case of the death of a passenger the law to be applied is the law of the Warsaw Convention.

In the absence of an international agreement where would a plaintiff bring his action? To which court would he go to bring his action? That is settled by Article 28 of the Warsaw Convention.

In the case of wrongful death, what persons would be entitled to bring an action, and what would be their respective rights? That is settled in Canada by the Carriage by Air Act, the second schedule, which sets out who those persons are, and stipulates that the damages to be recovered are those stipulated in the Warsaw Convention.

Another point that would arise is: What law would apply if an accident occurred over the high seas or in the air at, let us say, 30,000 feet under circumstances where it would be impossible to determine over what territory the aircraft was flying at the time of the accident? Accidents have occurred in the air which have not involved the subsequent destruction of the aircraft on the

surface. These accidents are caused by turbulence of the air. Passengers also have been injured and killed by flying bits of metal from the engines or the propellers. If such an accident occurred and a passenger unfortunately lost his life over the high seas, or at 30,000 feet and we could not be sure where the accident happened, then if the suit were brought in Canada the Carriage by Air Act would apply and the Warsaw Convention would apply.

If the Warsaw Convention were not in effect we would not have any basic, uniform rules respecting traffic documents. If Canada denounced the Warsaw Convention—which I hope will never happen—Canadian air carriers would be at a distinct disadvantage in their ability to settle claims at reasonable sums compared to air lines of states which are still members of the Warsaw Convention. Furthermore, it would be available to air lines to set even lower limits than the limits in the Warsaw Convention in all cases where the Warsaw Convention did not apply and where such a practice was not contrary to national laws.

Now, what are the objectives of the Warsaw Convention? They are set out in the preamble, as you remember. These objectives are to provide, in a uniform manner, the conditions of international carriage by air in respect of the documents to be used and of the liability of the carrier.

Now, Mr. Chairman, perhaps that is enough time to take up for this preliminary exploration of the Warsaw Convention. I have tried to show how useful it is, and what would be the situation if we did not have it. A lot more could be said about it because it is a very large subject, but let me just come down to the necessity for the amendments.

After the Warsaw Convention had been in effect for a number of years it became apparent to experts on the subject that certain amendments were required. Attempts were made to discuss these amendments prior to World War II, and after World War II at a meeting of the legal committee of I.C.A.O. in Geneva, at which I was present, Major Beaumont of the United Kingdom succeeded in obtaining the authority of the legal committee to set up a sub-committee to deal with the Warsaw Convention. That was in 1948, and I was a member of the subcommittee for a time.

It took seven years to bring this to fruition, which is not an unusual time for the bringing about of agreement on an international convention. It was only in 1955 at The Hague that the amendments were finalized.

These amendments were designed to correct two things—perhaps I should say three things. They were designed to correct language difficulties. They were also designed to remove from the convention some unnecessary provisions such as the elaborate conditions that had to be inserted into a passenger ticket or an air waybill or a baggage check which would slow up the passenger's boarding at the airports, particularly on international flights, and most of this information was not necessary anyway.

The third important group of amendments related to the limit of liability and to the liability of the carrier and his employees under certain circumstances.

In the case of freight, for instance, where a waybill is required it is made out in 99 per cent of the cases by the person shipping the goods; it is not made out by the air line. You can imagine what difficulty there would be if the clerk had to check all the details on the waybill.

Then, there was the extraordinary provision that if these conditions were not inserted on a baggage check or an air waybill the air line lost its limitation of liability. I can tell you of a case in point, namely, the gold loss of Trans-Canada Air Lines at Malton airport some years ago. There was something not put into the air waybill, which had nothing to do with the

loss of the gold, but yet the air line lost its limit of liability because that was not put in by the shipper. Those provisions are removed by The Hague Protocol.

There is a very important insertion, however, which makes it even more prominent that it was in the Warsaw Convention, and that is the provision that the passenger ticket and all the other documents must notify the passenger or the shipper of the limits of liability of the Warsaw Convention and The Hague Protocol. In other words, notice to that effect must be in the ticket, and if it is not the carrier loses its limit of liability which, I think, is perfectly correct as a matter of practical application of the law. The passenger and the shipper should be notified of the limitations of liability in no uncertain manner.

Perhaps I might run through the protocol very quickly, Mr. Chairman. Articles I to X are designed to clarify the meaning, or simplify the terms, of the Warsaw Convention. I will give you one illustration.

In Article 1 the question of who is an international passenger caused some difficulty in the courts because of a situation involving a round trip. The case which raised the difficulty in the first instance occurred in England in which the passenger went from London to the continent and back again with a stopover in Brussels. The question was: Although Belgium was a signatory to the Warsaw Convention, had Belgium ratified the convention? The courts in England decided the passenger was an international passenger because there was an agreed stopping place in a foreign country.

Senator THORVALDSON: Was, or was not?

Professor ROSEVEAR: Was. Now, the Warsaw Convention is amended by The Hague Protocol to make it perfectly clear that if the passenger buys a round-trip ticket with an agreed stopping place in another state then that passenger is an international passenger.

The CHAIRMAN: May I suggest, Professor Rosevear, that you perhaps had something to do with drafting these amendments?

Professor ROSEVEAR: Yes, I did have something to do with drafting some of them.

I do not think, Mr. Chairman and honourable senators, you wish me to take up much time with the Articles dealing with tickets, air waybills and baggage checks. I have already explained some of the details that have been removed from those provisions.

If you look at the protocol carefully you will find it is obligatory to insert in these documents a notification to the person concerned that the carriage is subject to the convention.

I think most of the controversy over The Hague Protocol is found in article 22. That is, article 22 of the Convention, but article 11 of the Protocol.

The CHAIRMAN: Starting on page 6.

Professor ROSEVEAR: Starting on page 6, yes. Let me just say about this matter, this, of course, was the subject of a controversy at The Hague, and there were many meetings of the legal committee prior to that, because you must remember there are many states in the world that have not the high standard of living of Canada and the United States and, therefore, \$8,000 in some states was considered a large sum of money, particularly in a country like India. \$8,300 was set in 1929. That was not too bad a limit. By the way, in 1929 the liability was set by Europeans, because the Convention mostly concerned them in 1929. There was not any real transatlantic flying in 1929.

Now, since that time many attempts have been made to revise these limits upwards, and might I hurry along by saying the United States' delegates tried to get \$25,000 fixed as the limit and finally suggested \$20,000 at The Hague.

The other states suggested \$12,000, and as you can see if you examine the figures, \$16,000, or a figure in that bracket, seems to be just about a compromise between the high limit and the low one suggested. We should always bear in mind that when an agreement is reached on a controversial subject like this at an international conference its end result is a compromise.

Senator REID: I see that neither the United States, Britain nor Canada are listed. On the last page, page 12, all the countries are listed, but I do not see the United States, Canada or Great Britain included.

Professor ROSEVEAR: They did not sign it at the time, and the reason they did not sign it at that time was, as I recall it, their delegates were not instructed to sign.

Senator REID: They are signing it now, are they?

Professor ROSEVEAR: The matter is before the United States Congress and before our Parliament here. I am not sure what progress they are making at the moment in the United Kingdom. Perhaps some of the other people here could tell us that.

Senator REID: Canada has signed it?

Professor ROSEVEAR: Canada has not signed it yet. It will as soon as Parliament authorizes it.

Senator KINLEY: This 125,000 French francs, that was raised to 250,000?

Professor ROSEVEAR: Yes.

Senator KINLEY: Was that done by the Convention?

Professor ROSEVEAR: That was done by—

Senator KINLEY: —by a supplementary convention?

Professor ROSEVEAR: The Protocol did that. That is the Protocol the Senate is now asked to approve.

Senator THORVALDSON: That is the 1955 Protocol?

Professor ROSEVEAR: Yes, they doubled the limit of liability by the provisions of the Protocol. You will find a new Article 22 is written into the Convention covering the indemnity.

Senator KINLEY: What is the Protocol?

The CHAIRMAN: That is the 1955 supplementary agreement to the Warsaw agreement of 1929.

Senator KINLEY: Who constitutes this Convention or Protocol? Do the air carriers have any voice in that?

Professor ROSEVEAR: I intended to mention that to you. That is an important question.

The legal committee of ICAO, which deals with this in the first instance and does the drafting work, consists of representatives of governments only. The people who deal with this matter are delegated by their governments to attend the legal committee meetings of ICAO, and they are the ones who deal with this. So the conversations that take place are between governments. Does that make it clear, Mr. Chairman?

Senator KINLEY: In Article 22 it states:

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs.

That is the ceiling, is it?

Professor ROSEVEAR: Yes, that is the ceiling.

Senator KINLEY: You cannot go above that?

Professor ROSEVEAR: That is right. But I wish to make this clear, that that

is the ceiling in every country that ratifies this Convention. At the present time the ceiling is \$8,300, approximately, and that is so in 72 countries.

Senator KINLEY: That is subject to legal liability?

Professor ROSEVEAR: That is the extent of liability on the death or wounding of a passenger or any other bodily injury suffered by a passenger on an airplane or in the process of embarking or disembarking. That is so in a uniform manner in 72 countries right now, and if the Protocol goes through and the same 72 ratify it, then the limit will be raised to \$16,500.

Senator KINLEY: It depends on the value of the French franc as compared to gold?

Professor ROSEVEAR: In our case it depends on the relationship between the United States dollar and gold.

Senator KINLEY: You have to prove the liability?

Professor ROSEVEAR: No.

Senator KINLEY: But anyone who is going on a plane and is injured must prove the company is liable. He does not get that as a matter of right?

Professor ROSEVEAR: I should mention that, because you cannot consider Article 22 of the Warsaw Convention without at the same time considering the other relevant articles, and Article 17 should be looked at.

Article 17 of the Warsaw Convention provides that the airline is liable. What it says is this:

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

If a lawyer takes such a case to court all he has to prove is that the man was an international passenger on an aircraft, and that he was injured or killed on the aircraft.

Senator KINLEY: He does not have to prove that he was not negligent himself?

Professor ROSEVEAR: That is provided for, but it is almost impossible to conceive of him having very much to do with the operation of the airplane. He could have interfered with the pilot, or something like that, but that is provided for. The only way the carrier can escape liability is found in Article 20:

(1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

That results in the very heavy onus resting on the airline that it took all necessary measures to avoid the damage, or that there were no measures it could have taken.

Senator THORVALDSON: This means the airline is really liable in the case of an accident?

Professor ROSEVEAR: Yes, that is right.

There is another provision which the delegates to ICAO were very insistent upon. That is found in Article 25, which has been amended by the Protocol. You must also read Article 25 along with Article 22.

Under Article 25 the provision is made:

(1) The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the

damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seized of the case, is considered to be equivalent to wilful misconduct.

That has been amended by the Protocol, because there has been a tremendous amount of difficulty all over the world in interpreting that clause. In the first place, this is not an exact translation of the French, and the common law does not know anything about the French delictual liability known as "Dol", and as a result there has been some confusion.

The drafters of The Hague Protocol have changed the language of Article 25 so as to make much clearer what is meant. This is the way it reads, and this is what the Senate is asked to approve now.

The CHAIRMAN: This is at the top of page 8 of the bill.

Senator THORVALDSON: Which article?

Professor ROSEVEAR: Article XIII.

The CHAIRMAN: Article XIII of the Protocol.

Professor ROSEVEAR: And Article 25 of the Convention.

Article XIII.

In Article 25 of the Convention—

paragraphs 1 and 2 shall be deleted and replaced by the following:—

"The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."

Now that is to clear up some legal difficulties which existed under the old wording.

Senator METHOT: Is there a limitation on the time in which an action should be taken?

Professor ROSEVEAR: Yes, it is here—two years. It is twice as long as it is under the Fatal Accidents legislation in all the provinces in Canada including the Civil Code of Quebec. It is two years under the Warsaw Convention.

Senator THORVALDSON: May I ask a question to clear up a misunderstanding which I think exists. Until this Parliament ratifies the convention we are still subject to the limitation of \$8,000?

Professor ROSEVEAR: That is right.

Senator THORVALDSON: In order to be within the new protocol in all respects we have to ratify this?

Professor ROSEVEAR: That's right. Perhaps I could answer some questions now because I think that would make it much clearer than if I were to continue. This is a complicated subject. I would like to say this much, however, that it is my firm view that you have to deal with this convention from an international point of view. This convention has come up in the various parliaments of the world, and I am sure this has been said in all seventy-two countries many times, that you have to deal with this subject on an international basis. It cannot be dealt with on a national basis and we must look at it internationally. While it seems to be favourable to carriers that there should be a limited liability, it becomes necessary because some states in the world wish to have this limit of liability. We must look at it from an international standpoint with respect

to the passenger himself and the shipper. They have certain advantages under this convention, as I pointed out earlier. I also pointed out what would happen if there was no Warsaw Convention, and it seems to me we should not pay attention only to the limitation of liability. We should look at it from the standpoint of the whole convention and view the kind of situation it creates. It creates a world-wide jurisprudence. Here in Canada we are extremely fortunate because we have already passed the Carriage by Air Act. And in ratifying The Hague Protocol we are amending that statute. We are extremely fortunate we have that act. In the United States where all the Congress did was to ratify the convention, they have no such act, and so they have to depend upon the law of the place where an accident happened in the event of such an accident. In this country if a suit is properly brought into a proper court, all we have to do is to look to the Warsaw Convention. We find in the schedule to the act the provision in a case involving the death of a passenger by accident, and it also sets out the rights of the dependents of such a passenger to bring an action and what the other rights are. I point this out because the United States does not have this and if an accident happens in Portugal, for example, they have to go to Portugal to see what the rights of the passengers are. This act or a similar act applies throughout all the countries of the Commonwealth.

Senator KINLEY: As a matter of interest I notice this says October 1939 and it says it was signed by His Majesty the King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India. Was Canada included when His Majesty signed this?

Professor ROSEVEAR: May I answer that? The United Kingdom excluded Canada from this signature. You will remember that in 1919 we became independent in foreign affairs by the action of Sir Robert Borden who insisted on signing the Versailles treaty. After that Great Britain didn't sign treaties on our behalf. I might add that The Hague Protocol amends the reference to "high contracting parties". The lawyers were rather concerned for a while because they thought that a flight between Canada and the United Kingdom was not an international flight for the reason that the King had signed the Warsaw Convention. But now we are overcoming that by not referring to "high contracting parties" but to "contracting states".

Senator KINLEY: May I ask a question about the part the travelling public is interested in? First of all don't you think the amount is ridiculously low for people travelling compared with the way they are protected when travelling by other modes of transport?

Senator BAIRD: They can also protect themselves by taking out insurance.

Senator KINLEY: But the deputy minister referred to the British North America Act and he said we took a certain standing from the merchant service. He said that because shipping was a federal matter therefore air is a federal matter. But under the air act the limitation is very low compared with the shipping act. Under the shipping act you have the sum of 100,000 French francs. I know it depends upon the tonnage but the disparity between the two methods of transport is very great.

Professor ROSEVEAR: I do not think the disparity is as great as one would suppose. In the first place there are not as many passengers, as a rule, on an airplane as there are on a ship. Also a ship carries a great deal of freight. When a ship meets with a disaster, it is true that the liability is limited to so much a ton of the ship's tonnage. But under maritime law a lump sum is provided. Let us say, for the sake of argument, that a ship is covered to the extent of \$1 million, we must remember that that has to be divided among a great many passengers and freight owners.

Senator KINLEY: According to the tonnage of the ship.

Professor ROSEVEAR: There is a completely different basis involved. The basis of the liability under maritime law is a fund based on the size of the ship. In air law we apply it to the person and not to the ship at all. I think you will find out it works out quite favourably.

Senator KINLEY: But this liability is per person. If I am travelling on a ship of 30,000 tons I have certain rights.

Professor ROSEVEAR: If there are not sufficient funds to pay all claims, they are distributed rateably, in accordance with the Canada Shipping Act. Passengers come first and then freight. If you are on a small ship you might only receive a part of your claim.

Senator KINLEY: I know we cannot change it because of competition between airlines, and in fact it would be bad for our airlines if we were to put obligations on them that other countries haven't got. You cannot do that, but I think it is still ridiculously low. I have seen a report on one occasion where a person got \$100,000 in the United States. Now, of course, the United States is not in this.

Professor ROSEVEAR: They are in it now. May I say this, it seems to me that ours is a constructive approach to this matter.

Senator KINLEY: Would the same thing apply in other jurisdictions?

Professor ROSEVEAR: We should ratify this in order to get the \$16,000 instead of the \$8,000, and then we should instruct our delegates at ICAO to press for a higher limitation. That seems to me to be the constructive approach.

Senator KINLEY: Another thing is this ticket that you buy at the airport. You said that the air line had to inform its passengers that it was only responsible for a certain amount. I have a ticket here—

The CHAIRMAN: Is that an international ticket, Senator?

Senator KINLEY: This is a ticket on T.C.A.

The CHAIRMAN: Within Canada?

Senator KINLEY: Yes.

The CHAIRMAN: That does not apply. We are dealing only with international flights.

Senator KINLEY: The printing is so small that it cannot be read. It seems to say:

Unless expressly so provided, nothing herein contained shall waive any limitation of liability of carrier existing under the Convention or applicable laws.

Now, if you are going to notify people—

Professor ROSEVEAR: I would point out that at the top of the ticket there is a notice to the effect that it is under the convention.

Senator KINLEY: Yes, you are subject to the convention.

Professor ROSEVEAR: That is a uniform ticket, and that ticket says that if the convention applies to the carriage, or if applicable laws apply to the carriage, then the ticket is subject to them. But, at the beginning of the ticket it refers to the international Convention of Warsaw.

Senator KINLEY: Senator Baird says that we have insurance. The air line carries us for just a few hours and the insurance may cost a dollar. If you buy an insurance policy every day it is not so cheap. It is said it is cheap, and it does not look bad because you are buying it only once in a while, but we will be buying insurance more frequently in the future because we are told we are going to have free transportation. Will the people who have free tickets be subject to the same conditions of travel as those who have passes? I think it is a matter of statutory law that people who travel on

passes are the first to be put off an aircraft; that people who have bought tickets are given a little priority in that respect. That is one thing that the air lines should consider.

I think to be fair this ticket should have something across it in red to the effect that it is subject to the provisions of the Warsaw Convention. I do not think that that should be hidden away in the small printing. I am a little older than some people, and it is difficult for me to read it.

There is another matter I would like to bring up. This is based upon a particular French franc, and that is the franc, I think, that Poincaré brought in when he tried to re-establish the currency of France. The franc came into being in 1928. I suppose the consideration at that time was to have something that was stable, but the French franc now is worth about 22 cents, whereas the gold franc was worth about \$34. It seems to me that it is a standard of instability.

Senator THORVALDSON: The gold franc was worth 34 cents. I think you said \$34.

Senator KINLEY: Yes, and it is now worth 22 cents.

The CHAIRMAN: Senator, if you look at paragraph 5 of the proposed new Article 22 on page 7 you will see that the francs referred to are gold francs.

Senator THORVALDSON: Mr. Chairman, is not the quick answer to this simply that the convention contains provisions which prevent fluctuations of the French franc from affecting the limit of liability in dollars or pounds, or anything else?

The CHAIRMAN: It is a fixed gold standard.

Senator THORVALDSON: Yes. This came up in the house, and was discussed for quite some time, and I think it was settled. I think we understood that.

Senator KINLEY: I have here a letter from the Bank of Montreal which says concerning the gold franc of 65.5 milligrams of fine gold, mentioned in the Canada Shipping Act:

Using as a basis of \$37.80 Canadian (U.S. \$35.00 plus 8 per cent premium) per ounce for gold 9/10 fine the weight of 65.5 milligrams of fine gold would give a franc rate of 7.9602 cents, Canadian funds.

Now, this is not the French gold franc; this is the Poincaré franc. That is the franc that was used by the President of France. It was 65.5 milligrams of fine gold. That is the one that is used, and that was done so that there would be a stable currency in Europe at that time, but it was not done for the benefit of Canada or the United States. That may be a reason why the United States has not come in yet.

Professor ROSEVEAR: No, no—might I answer that, Mr. Chairman?

The CHAIRMAN: Yes.

Professor ROSEVEAR: I might say that the Warsaw Convention has this wording:

The sums mentioned above shall be deemed to refer to the French franc consisting of sixty-five and a half milligrammes gold of millesimal fineness nine hundred.

That is the Warsaw Convention. That has now been amended by not referring to the French franc at all, but by saying:

The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred.

I understand from international currency experts that it is possible to find out what the value of that is at any time.

Senator KINLEY: That is worth only eight cents today.

Professor ROSEVEAR: But it does not mention the French franc any more.

Senator KINLEY: Well, it is a fineness of gold. In any event this is ridiculous. It is something that gives the deflated currency countries of Europe an advantage.

Senator METHOT: The proposed paragraph 2 of Article 26 of the Convention reads:

In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days—

Does that mean that if there is no complaint within seven days then there is no cause of action and no recourse?

Professor ROSEVEAR: Yes, that is true, but that has to do with goods, does it not?

Senator METHOT: Yes, there is nothing with respect to the death of a person.

Professor ROSEVEAR: No. You have two years within which to bring your action.

Senator METHOT: And it is not necessary to give notice before?

Professor ROSEVEAR: No.

Senator KINLEY: I do not think we can do much about it under the circumstances from either a practical or a legislative point of view, but I think the public should be notified that they must protect themselves by taking out insurance. There should be another notice on the ticket. That is my first point. My second point is that we should keep our eyes open to see whether the United States comes in, because most of our travel is within the North American continent.

The CHAIRMAN: Does the committee wish to hear any further evidence? We have present the counsel for Trans-Canada Air Lines, Canadian Pacific Air Lines and the Department of Transport. I suppose all they can say is that they have no objection to the bill.

Senator FLYNN: May I address a question to one of these gentlemen about the changes in aviation since the Protocol was agreed to in 1955? Eight years have elapsed, and I would like to hear their views concerning the impact of changed conditions on the limitation of liability since that time.

The CHAIRMAN: Perhaps Professor Rosevear can answer that question as well as anybody.

Senator FLYNN: The Protocol was agreed to in 1955, and since then conditions have changed. I would like to hear their views as to this limitation of \$16,000 when it is considered in the light of present conditions in aviation.

The CHAIRMAN: Whom would you like to hear on that subject, Senator Flynn?

Senator FLYNN: Possibly a representative from the air lines can tell us. There has been much progress made in aviation since then. It now takes only six hours to fly to Paris whereas at that time it took 12 hours. I would think there is more safety now, and I think that that is tied up with the question of the limit of liability.

The CHAIRMAN: Mr. McPherson is the counsel for Trans-Canada Air Lines. I wonder if he would have anything to say on this subject. You have heard Senator Flynn's question, Mr. McPherson.

Mr. MCPHERSON: Yes, I think I did.

Mr. Chairman and honourable senators, before I answer Senator Flynn's question I would like to extend the thanks of Trans-Canada Air Lines to

the Senate committee for allowing us to appear here today and answer your questions, I hope to your satisfaction.

This question the honourable senator has posed, quite frankly I was not prepared to answer. I think though I can point out that it may be of significance that in the last five or six years the incidence of fatalities per passenger mile has dropped by 75 per cent, so it is a fair indication in international flying that the safety factor is increasing tremendously year by year.

Senator THORVALDSON: Did you say during the last 10 years?

Mr. MCPHERSON: I am not sure of the exact figure, but it is certainly within the last 10 years. The last time I saw the figures it had dropped from four, compared with a certain number of passenger miles, to one today.

With respect to the actual limitation of liability—which, incidentally, is closer to \$18,000 in Canadian currency at the present moment—we find the figures compare very favourably with the actual average payments made in the case of major accidents.

The airlines naturally tend to keep these figures of settlements very confidential, but in the United States when they were considering this legislation figures were compiled which indicated, I think—and Mr. Clark of Canadian Pacific Air Lines can confirm this—that the average settlement in the United States on domestic liability, where you had no limitation on liability at all, was in the vicinity of about \$23,000.

Mr. CLARK: \$25,000.

Mr. MCPHERSON: \$25,000, which is not greatly in excess of this \$18,000 we are talking about.

The other thing is that in collecting this average amount the passengers or their dependents were faced with the very heavy onus of having to establish negligence on the part of the carrier. The *quid pro quo* in the Warsaw Convention, and in the Convention as being amended by The Hague Protocol, is that the dependents of deceased passengers are not faced with this heavy onus. In fact, the airlines are faced with what is tantamount to absolute liability, so, consequently, the passenger or his dependents are almost guaranteed getting \$18,000. If wilful misconduct can be shown on behalf of the carrier or its servant there will be unlimited liability at the same time as the benefit to the claimant of absolute liability on the carrier.

That reference to wilful misconduct brings to mind two points raised by honourable senators on second reading. I think that Senator Bouffard raised the question of the drunken pilot. Under those circumstances there is not much doubt in my mind the courts would find there had been wilful misconduct, and there would be no limitation, and the carrier would not be able to seek any limitation. I think Senator Grattan O'Leary raised the question of airlines following a different practice, and I noted this because he mentioned Trans-Canada Air Lines refusing to fly while another airline did take off in bad weather—and I should emphasize it was not Canadian Pacific Air Lines—and he raised the question there as to what would happen and why should this carrier who took off in extremely bad weather deliberately be benefitted by the limitations. I think, in those circumstances, I can say again that in all probability the courts would hold there had been wilful misconduct there, depending of course on the facts. And again the limitation would be unavailable to the carrier.

I have rambled a bit, but I think this background of the current status will be of some value to you.

The other thing is, as standards of living increase you will find from time to time these figures have to be revised. It was \$8,300 U.S. in 1929, and

we are now considering \$16,000 plus in 1955, and perhaps in another few years' time the countries of the world will get together again and have another revision.

Senator BAIRD: Would it be a fair question to ask whether the airlines protect themselves against liabilities? Do they insure or what?

Mr. MCPHERSON: I think it varies from airline to airline depending on their financial situation. Basically I think it is fair to say that all major carriers in the world do carry a tremendous amount of insurance. Some of these airlines like Trans-Canada carry a large self-insurance fund and also insure for excess liability beyond that. Other carriers insure from the very first dollar. The sum of the insurance will vary depending on the type of operation. If you have an aircraft with a lot of takeoffs and landings, and making short trips, the insurance premium is higher than on the longer range flights because landings and takeoffs are regarded as more hazardous.

Senator REID: What is the situation regarding members of Parliament travelling by air on gratuitous passes?

Mr. MCPHERSON: This falls into two categories, so far as the Warsaw Convention is concerned the situation that would apply to gratuitous carriage would probably apply in this case.

Senator KINLEY: I don't think I can agree with that.

Mr. MCPHERSON: If it is not gratuitous there would be no question but that it would apply.

Senator KINLEY: If a government passes an order in council that a member of Parliament is entitled to travel on an aircraft, that is not gratuitous.

Mr. MCPHERSON: This would be travelling under the same conditions as any fare-paying passenger.

Senator KINLEY: I remember at one time they tried to stop passes at Christmastime. The C.P. wrote me an apology, because it was a statutory provision and they had no right to do that. At this stage may I ask a further question? You refer to international traffic, and the ticket says international traffic. Don't we in our statute which we are passing today mention that sum of 250,000 francs, and therefore isn't our liability in Canada subject to this sum of 250,000 francs?

The CHAIRMAN: I don't think there is any limitation of liability for internal flights.

Mr. MCPHERSON: That is not correct, Senator Kinley. This convention as incorporated in the Carriage by Air Act is strictly limited to international carriage as defined in the Warsaw Convention.

Senator FLYNN: It is mentioned on the ticket.

Senator THORVALDSON: May I ask this question. If the Warsaw agreement does not apply on flights within Canada the Canadian passenger has not the benefit of the tremendous advantages he has under the Warsaw agreement now by virtue of the fact that there is practically unlimited liability against the carrier.

Mr. MCPHERSON: He falls in the same category as any other claimant in a damage suit.

The CHAIRMAN: But the amount he can claim is unlimited.

Senator THORVALDSON: So that the advantages to the passenger are enormous.

Mr. MCPHERSON: That is how we consider it. The two balance out.

Senator FLYNN: The sum on international flights is \$18,000. But that \$18,000 is a maximum and not a minimum. It could be a matter of \$3,000, for example, in the death of a baby or a child.

Mr. MCPHERSON: That is correct, sir. There can be no claim with respect to persons who have no dependents. The law in that case does not recognize any right to compensation.

Senator FLYNN: My point is that if the incidence of accidents or deaths has decreased by 75 per cent in the last five or ten years then that would be an argument in favour of increasing the limit of liability.

Mr. MCPHERSON: I think possibly, in so far as the overall potential liability of the carrier is concerned, that would be correct, but at the same time we have to recognize that the number of passengers carried has increased tremendously over the last ten years.

Senator FLYNN: And so have the revenues, I hope.

Senator KINLEY: Mr. Chairman, we are passing this act—

The CHAIRMAN: We have not yet passed it, Senator.

Senator KINLEY: Well, we are going to, I understand. This act says that there shall be a limitation of liability of 250,000 francs. That is in a Canadian statute. That applies in Canada, does it not?

The CHAIRMAN: Well, it applies to international flights in so far as Canadian passengers are concerned.

Senator KINLEY: Does it not apply to local flights?

The CHAIRMAN: No, no.

Mr. MCPHERSON: I think I can explain that to you, sir. In the act itself, as distinct from the schedule which is the Warsaw Convention, it is stated in section 2—I am referring to the Carriage by Air Act, and not Bill S-37—

The CHAIRMAN: That is the 1939 act?

Mr. MCPHERSON: Yes, sir, section 2 reads:

As from such day as the Governor in Council may, by proclamation published in the *Canada Gazette*, certify to be the day on which the Convention comes into force as regards Canada, the provisions thereof as set out in the First Schedule shall, so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons and subject to the provisions of this section, have the force of law in Canada in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

The First Schedule is the Warsaw Convention. The significant words are "to which the Convention applies", because then you have to look to the Convention which itself states that it applies in the case of international carriage. So, there is the restriction on it.

Mr. Fortier mentions that there is also section 4 that authorizes the Governor in Council to apply the same principles to domestic carriage, but that has never been done.

Senator KINLEY: That has never been done. It is open in Canada?

Mr. MCPHERSON: Yes, it is open in Canada.

Senator KINLEY: But you can get another agreement with the air lines in regard to liability. Tell me about that.

Mr. MCPHERSON: This is a provision in Article 22 of the convention, as I recall it, which—yes, Article 22(1), reads in part:

Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

To the best of my knowledge none of the great international carriers have ever taken advantage of that, and neither has any passenger taken advantage of it.

Senator KINLEY: If I wanted to do that what would be my procedure?

Mr. MCPHERSON: I think that would be up to the two contracting parties, the passenger and the carrier. It would be subject to agreement by both parties, but the present practice of the carriers is not to enter into such contracts. Professor Rosevear has just pointed out that it would also be contrary to Canadian legislation in so far as it does not permit discrimination between one passenger and another which is, I think, a very relevant point.

Senator KINLEY: That is in effect now?

Mr. MCPHERSON: That is correct.

The CHAIRMAN: Are we through with our discussion, gentlemen? Does anybody else wish to make any representations with respect to this bill? Is the committee ready to consider the bill?

Senator THORVALDSON: I move that we report the bill.

The CHAIRMAN: Shall the preamble carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall the title carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: I think I should say a word of thanks on behalf of the committee to the gentlemen who have appeared before us this morning and who have enlightened us a great deal on this subject, and in that respect, without derogating from anybody else, particularly to Professor Rosevear.

The committee thereupon adjourned.



First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE
STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill S-38, An Act to provide for the Establishment of
Harbour Commissions.

The Honourable A. K. HUGESSEN,
Chairman.

No. 1

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WEDNESDAY, OCTOBER 30, 1963.

WITNESSES:

The Honourable George McIlraith, P.C., Minister of Transport; Mr. G. W. Stead, Deputy Minister, Marine Section, Department of Transport; Mr. W. W. Ryan, Supervising Construction Engineer, Department of Public Works; Mr. Donald D. Summerville, Mayor of the City of Toronto; Mr. E. B. Griffith, General Manager of Toronto Harbour Commission; Mr. W. R. Callow, solicitor for the City of Toronto; Mr. Victor Copps, Mayor of the City of Hamilton; Mr. Foster Roger, solicitor for the City of Hamilton; Mr. John Munroe, M.P.; Mr. Joseph Macaluso, M.P.; Mr. E. J. McNeely, solicitor for the City of Oshawa; Mr. B. W. Morison, Controller for the City of Hamilton.

APPENDIX "A"

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

THE STANDING COMMITTEE
on
TRANSPORT AND
COMMUNICATIONS

The Honourable
ADRIAN K. HUGESSEN,
Chairman

The Honourable Senators

Baird,	Fournier
Beaubien (<i>Provencher</i>),	(<i>Madawaska-Restigouche</i>),
Bishop	Gershaw,
Bouffard,	Gouin,
Bradley,	Haig,
*Brooks,	Hayden,
Buchanan,	Hollett,
Campbell,	Horner,
Connolly (<i>Halifax North</i>)	Hugessen,
(<i>Halifax-Nord</i>),	Isnor,
Connolly (<i>Ottawa West</i>)	Jodoin,
(<i>Ottawa-Ouest</i>),	Kinley,
Croll,	Lambert,
Dessureault,	Lefrançois,
Dupuis,	*Macdonald (<i>Brantford</i>),
Farris,	McCutcheon,
	McGrand,
	McKeen,
	McLean,

49 members (Quorum 9)

*Ex officio member

LE COMITÉ PERMANENT
des

TRANSPORTS ET
COMMUNICATIONS

L'honorable
ADRIAN K. HUGESSEN,
président

Les honorables sénateurs

Méhot,
Molson,
Monette,
Paterson,
Pearson,
Power,
Quart,
Reid,
Robertson (<i>Shelburne</i>),
Roebuck,
Smith (<i>Kamloops</i>),
Smith (<i>Queens-Shelburne</i>),
Stambaugh,
Taylor (<i>Westmorland</i>),
Thorvaldson,
Veniot,
Vien,
Welch,
Woodrow—(49).

49 membres (Quorum 9)

*Membre d'office

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 23rd, 1963.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lambert, seconded by the Honourable Senator Croll, for second reading of the Bill S-38, intituled: "An Act to provide for the Establishment of Harbour Commissions".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lambert moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, October 30th, 1963.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.00 A.M.

Present: The Honourable Senators: Hugessen (*Chairman*), Baird, Brooks, Croll, Dupuis, Gershaw, Hayden, Hollett, Horner, Isnor, Kinley, Lambert, Macdonald (*Brantford*), McCutcheon, McLean, Paterson, Pearson, Power, Quart, Reid, Roebuck, Smith (*Kamloops*), Smith (*Queens-Shelburne*), Stambaugh, Thorvaldson, Veniot and Woodrow—27.

In attendance: Mr. E. Russell Hopkins, Q.C., Law Clerk and Parliamentary Counsel, The Official Reporters of the Senate.

Bill S-38, An Act to provide for the Establishment of Harbour Commissions was read and considered.

On Motion of the Honourable Senator Croll, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Heard in explanation of the Bill were: The Honourable George McIlraith, P.C., Minister of Transport; Mr. G. W. Stead, Deputy Minister, Marine Section, Department of Transport; Mr. W. W. Ryan, Supervising Construction Engineer, Department of Public Works; Mr. Donald D. Summerville, Mayor of the City of Toronto; Mr. E. B. Griffith, General Manager of Toronto Harbour Commission; Mr. W. R. Callow, solicitor for the City of Toronto; Mr. Victor Cops, Mayor of the City of Hamilton; Mr. Foster Roger, solicitor for the City of Hamilton; Mr. John Munroe, M.P.; Mr. Joseph Macaluso, M.P.; Mr. E. J. McNeely, solicitor for the City of Oshawa; Mr. B. W. Morison, Controller for the City of Hamilton.

In attendance but not heard were: Mr. W. J. Manning, Director of Marine Works, Department of Transport; Mr. Jacques Fortier, Counsel for the Department of Transport.

On Motion of the Honourable Senator Lambert, it was Resolved to print as an appendix a brief submitted by the Board of Trade of Metropolitan Toronto.

On Motion of the Honourable Senator Hayden, it was Resolved to adjourn the further consideration of the Bill.

At 1.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS
EVIDENCE

Ottawa, Wednesday, October 30, 1963.

The Standing Committee on Transport and Communications to which was referred Bill S-38, an Act to provide for the Establishment of Harbour Commissions, met this day at 10 a.m.

Senator A. K. HUGESSEN (*Chairman*), in the Chair.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 200 copies in French of the committee's proceedings on the bill.

The CHAIRMAN: Honourable senators will recall that this bill raised considerable discussion on second reading in the Senate. It originates in the Department of Transport and I am glad to say that we have here the Minister of Transport, Mr. George J. McIlraith, whom we shall be glad to hear in connection with the bill.

He is assisted by a number of his departmental officials, including Mr. G. W. Stead, Assistant Deputy Minister, Marine; Mr. J. Fortier, Counsel for the department; Mr. W. J. Manning, Director, Marine Works Branch, and Mr. J. H. W. Cavey, Chief, Harbours and Property Division.

We also have a number of important public bodies who wish to make representations to us in connection with this bill.

We have the Corporation of the City of Toronto, represented by His Worship the Mayor, Mr. Summerville, and by the City Solicitor, Mr. Callow.

We have the Board of Trade of Metropolitan Toronto. Is there anyone here representing them?

Senator REID: If this is the proper time to table telegrams—

The CHAIRMAN: I have a number of telegrams.

Senator MACDONALD (*Brantford*): I received a telegram from some of the Board of Trade, in which they state that they could not appear today, that they want to appear tomorrow.

The CHAIRMAN: Perhaps you will allow me to complete my interim statement. I have a number of telegrams I wish to disclose to the committee myself. Then perhaps other senators who have telegrams can follow.

I ask if there is anybody in person representing the Board of Trade of Metropolitan Toronto. If not, they have made a submission in writing, addressed to me, dated yesterday, which no doubt should be read during the course of our proceedings.

Then we have the Corporation of the City of Hamilton, represented by Mayor Cops; and the City of Oshawa, represented by its City Solicitor, Mr. E. G. McNeely.

I think I should formally express a welcome to all these gentlemen on behalf of the committee, and tell them that we are glad to have them here and assure them we shall be assisted by them in our deliberations on this bill.

First, is there anyone else representing other interests here whom I have not mentioned? If not, those are the bodies who desire to be represented.

I have a number of telegrams from various interests. The committee will recall that in the schedule to this bill there is a list of, I believe, 11 boards of harbour commissioners constituted under special acts passed by this Parliament at various times, who can, if they desire, by making use of section 30 of the bill, come under this act. A week ago when this bill was referred to this committee, I instructed the Clerk of Committees to send an airmail letter to all these boards of harbour commissioners advising them that the committee would be meeting this morning to consider the bill, and enclosing a copy of the bill; so that I think the committee can be assured that all of these boards have been notified.

I have a number of telegrams in reply which I think I should read to the committee. I understand that other senators have also some telegrams. Possibly a number of them may be duplicates of those before me, but I will read the ones I have received first.

The first telegram is from the secretary of the North Fraser Harbour Commissioners, reading as follows:

The North Fraser Harbour Commissioners having studied Bill S-38 are unanimously of the opinion that they do not wish to be brought under the bill.

I assume that means they do not oppose the bill in itself but do not wish to exercise the right under section 30 to come under it.

The second telegram is from the Port Alberni Harbour Commissioners:

Have reference to your letter of October 23, 1963 concerning a meeting to be held on October 30, 1963 by the Senate Committee on Transport and Communication in connection with Bill S-38, please be advised that the Port Alberni Harbour Commissioners have no objection to Bill S-38, an act to provide for the establishment of Harbour Commissions.

Then this morning I received two telegrams, the first from the City of New Westminster, addressed to myself, an dreading as follows:

The City of New Westminster objects to the passage of Bill S-38 in its present form on the following grounds.

Then it has three proposed amendments to various sections of the bill, which I have asked the Law Clerk to examine. I do not think they are of any urgency and perhaps we can defer consideration of them until we consider the bill clause by clause. Then they go on to say:

The City of New Westminster raises no objection to the balance of Bill S-38 and compliments the Government of Canada in proposing legislation to permit the expansion of the New Westminster Harbour Commission to five members representing in addition to New Westminster the neighbouring ten municipalities on the Fraser River.

And it is signed by the Major and council of the City of New Westminster. Then there is a supporting telegram, addressed to myself:

Request assurance that Bill S-38 will not be finally passed until the points raised by the City of New Westminster has been clarified stop your reply will be appreciated.

And it is signed by Reeve D. W. Poppy, Township of Langley. Murrayville, B.C.

I also received this morning a similar telegram to that of the New Westminster telegram from the City of Port Coquitlam, suggesting the same changes

in certain clauses of the bill, and simply ending up by saying that the city raises no objection to the balance of Bill S-38.

While we are having our general consideration, I would ask our Law Clerk to look at these amendments and make a report on them to us in due course.

Have some honourable senators other telegrams?

Senator REID: You have the same telegram that I have, Mr. Chairman.

The CHAIRMAN: Senator Macdonald?

Senator MACDONALD (*Brantford*): No, Mr. Chairman.

The CHAIRMAN: Honourable senators, how shall we proceed? Shall we proceed in the usual manner and ask the Minister to come before us first and give us a brief explanation of the bill and then we can cross-question him. After he has given his evidence we can ask the various other parties who are interested to come before us.

Senator ROEBUCK: I think we should leave it to the Minister. If he wishes to address us now, all right.

Senator ISNOR: Mr. Chairman, before you call upon the Minister, may I ask if the National Harbours Board is represented here today?

The CHAIRMAN: The Minister can answer that.

The Minister says no. Mr. McIlraith, would you like to make a short presentation and submit yourself to questioning by members of the committee?

The Hon. George J. McIlraith, Minister of Transport: Mr. Chairman, honourable senators, I will try to be very brief in my presentation to your committee. Perhaps I should make a brief comment first. Having read the debates in the Senate, and many items in the newspapers, there seems to be some lack of perspective in what this legislation is about. Perhaps I should start by repeating something that I have no doubt you all know well. There are something of the order of 300 harbours in Canada operated by harbour masters appointed by the department. Then there are 11 operated under private acts, dating from before World War I until very recent years; one, I think, as recent as three years ago. Then there are the harbours under the National Harbours Board.

This legislation deals with the first two classes only, and it really deals with only the first group, the 300 which are operated by harbour masters. There are some other docks and wharves where there are not harbour masters, and I think perhaps for the purpose of this discussion they can be ignored, although some of them are quite good docks, and with the change in business volume in a given community they may require the appointment of a harbour master as further development is indicated.

Of this 300 there are always some of them at the point where they want further development, and the municipal authority goes along with them in the promoting and developing of them into quite a good enterprise. Then there are those in areas where they are backed up by very limited municipal support because the harbour by itself is somewhat isolated.

It is quite apparent there are no accounting controls, except those applied by the harbour master through the department, of the 300 harbours. These harbours represent expenditures running from a great many, where 100 per cent of the expenditure is from the federal Crown, with no contribution from any other source. Others of them are bringing in a fair amount of revenue and accumulate revenue; and in other places where you are dealing with this category there is a heavy municipal investment, and in some of these 11 harbours set out in the schedule very heavy earnings, and indeed very valuable property, other than that actually used in the operation of the port or harbour as part of their harbour operation.

The bill is an attempt to provide legislation, a uniform act that will enable any of these 300 to be brought under a local harbour commission with the federal and local authorities participating, because no harbour can operate successfully, as far as I can find out from studying the matter, without very close and effective co-operation between the local authorities and federal authority. It is a fact of life in operating a harbour that that must obtain.

This is an attempt to provide uniform legislation that will enable any of these 300 harbours, if they want to, to come under a harbour commission; it will enable a harbour commission to be set up and when this is done it will provide two main things of significance. There will be an accounting control so that there will be some idea of the accounting procedures and some uniformity, and some assurance that the diversion of funds collected from the shippers will be applied to the public purposes as well. There will be some control over that.

The CHAIRMAN: Mr. Minister, if this bill passes then there will be no necessity for any special bills in the future?

Hon. Mr. McILRAITH: No, Mr. Chairman. The second thing it will provide is that the accumulated capital of the harbour commission can be spent on capital works. We actually have one case now where a harbour commission has authority to borrow money that it requires for certain harbour works—some sheds are to be built—and they must borrow the money to build these facilities, although the harbour commission has the money it has earned through its harbour operations. It is an absurd situation. This legislation will provide that any harbour commission set up under it can use certain capital funds for capital development in the harbour.

Senator LAMBERT: Is that particular reference you just made included in any of these 11 harbours in the schedule?

Hon. Mr. McILRAITH: Yes, it is. Mr. Chairman, the concluding part of my remarks are these: There are, as you well know from the discussion, 11 harbours where the harbour commissions were incorporated by special act of Parliament and those acts are individual acts but they seem to fall into two groups—the group incorporated prior to the First Great War, and then a long hiatus, and the group appointed in the last few years.

The position of legislation vis-à-vis these 11 harbours is that if those 11 authorities want to avail themselves of the legislation they can; if they do not want to avail themselves of the legislation they do not need to. It is purely their option.

Senator CRERAR: Who exercises that option?

Hon. Mr. McILRAITH: They do.

Senator CRERAR: How are the members of a harbour commission appointed?

Hon. Mr. McILRAITH: The members are appointed differently in each one. Perhaps I could go through each of the 11. Senator Crerar, I do not believe I have that information here, but I think we could outline each of the 11. They are appointed differently in each case. For instance, the Toronto commission has a membership of five—three are appointed directly by the city council, the fourth by the Board of Trade with the approval of the Governor in Council and the fifth directly by the federal Government. Only one of the five is appointed by the federal Government.

Senator CRERAR: Who has the power to exercise control over the Toronto Harbour Board?

Hon. Mr. McILRAITH: The commission has the authority, but the commission in turn is controlled by the city council.

Senator CROLL: Controlled? Appointed—not controlled.

Hon. Mr. McILRAITH: I do not know of any more effective way of controlling than by appointment.

Senator CRERAR: Does the Government appoint anybody to the Toronto Harbour Commission?

Hon. Mr. McILRAITH: The federal Government appoints one.

Senator CRERAR: Who appoints the others?

Hon. Mr. McILRAITH: The city council appoints three, and the Board of Trade with the concurrence of the Governor in Council appoints the fourth.

Senator CROLL: Mr. Chairman, may I make this distinction? I think the minister said "controlled" and then agreed to the word "appointed". If tomorrow the city council of Toronto—or perhaps this applies to Hamilton too—

Hon. Mr. McILRAITH: Not to Hamilton; that is a different case.

Senator CROLL: If the city council of Toronto, which appoints the commissioners for a period of time, one, two or three years, wanted to fire them tomorrow, could they as appointed at the present time?

Hon. Mr. McILRAITH: I have not got their act here.

Senator HAYDEN: There is no recall.

Senator CROLL: The solicitor for the City of Toronto is here. He could answer.

Mr. CALLOW: Three years.

Senator CROLL: As of when?

Mr. CALLOW: The date of their appointment.

Senator CROLL: When was the last appointment made?

Mr. CALLOW: Last October, and it goes for another three years.

Senator MACDONALD (*Brantford*): Were the three of them appointed last October?

Mr. CALLOW: No.

Senator ROEBUCK: Then they are staggered, appointed at different times?

Mr. CALLOW: Yes.

Senator BAIRD: What is the position of the harbour of St. John's in all this?

Hon. Mr. McILRAITH: Perhaps I could ask Mr. Stead, who is Deputy Minister, Marine, to answer that question, Senator Baird.

Senator BAIRD: I know the federal Government has spent a lot of money there.

Mr. STEAD: They are governed by a pre-Confederation statute. The intention is, as was mentioned in your debates in the Senate chamber, that this bill could be used as a vehicle to set up in St. John's a regular commission of the national type—I do not mean under the National Harbours Board—but the type that is in effect elsewhere in Canada.

Senator BAIRD: The harbour now comes under the provincial authority?

Mr. STEAD: Yes, in a sense, and since there has not been any Government or Crown harbour property to administer there, it is not too active.

Senator CRERAR: In the event of the Toronto Harbour Commission operating with a deficit in any year who is responsible for making up that deficit?

Mr. STEAD: That problem has not arisen and I hope it won't.

Hon. Mr. McILRAITH: I do not think they have had a deficit for a long time. The Toronto Harbour Commission has a great deal of property other than immediate harbour property that has been reclaimed over the years and it involves a large area extending from out beyond the baseball stadium far to the east; there is a great deal of commercial property under its administration other than for immediate harbour purposes.

Senator CRERAR: Is all that owned by the City of Toronto?

Hon. Mr. McILRAITH: The harbour commission of Toronto runs, for the city, certain other things; for instance, the airport on the Island and other related properties, but it is really a Toronto enterprise.

Senator CRERAR: Mr. Chairman, I have not yet got the information I wanted. If the Toronto Harbour Commission operating the harbour operates at a loss for a year and that loss has to be made good, who is responsible for making it, Ottawa or Toronto?

Hon. Mr. McILRAITH: Neither one, as I understand the act. The commission does, although I am subject to correction on that—I think neither one is responsible for making up the operating loss.

Senator ROEBUCK: The harbour commission is a body corporate and can sue and be sued.

Hon. Mr. McILRAITH: They would have to go out of operation if no one would assist them.

Senator CRERAR: Supposing they could not borrow?

Hon. Mr. McILRAITH: Suppose they could not borrow, they would eventually have to go out of business unless someone came to their assistance. Perhaps Mr. Stead could pursue this point.

Mr. STEAD: Gentlemen, the financial relationships between the federal Government and the harbour commissions are a little involved, and I think before we can easily answer a specific question like that it might be worth while giving you a brief rundown as to how this relationship operates under the existing policy.

With some historical exceptions, the present procedure is that a harbour commission is set up in any port only when there is sufficient local interest and demand for doing so and adequate revenue coming into the existing harbour properties like wharves and harbour installations by way of harbour dues, wharfage charges, and so on. In other words, when the harbour gets big enough to have a separate, local organization rather than having it run by the Department of Transport, and when the harbour has sufficient growth potential, we welcome the opportunity to put it under the control of a harbour commission because it brings in local incentive, local enthusiasm, and so forth, to have the management locally.

The CHAIRMAN: That has to be done by special act of Parliament.

Mr. STEAD: Yes, when such a commission, set up either by separate acts in the past or by way of the standard procedure proposed by this bill here, requires further works, these are put up for consideration by the harbour commission, let us say, to the federal Government. We analyse it in joint committee, Public Works and the Department of Transport, and if the Government ultimately approves this to go forward it is done on a shared basis. That is to say, to the extent the proposed facility is profitable—and if it is not, of course it is not likely to be built—then the harbour commission undertakes a share of the capital load that is appropriate and can be paid off from the revenues which will be brought in by that facility, having regard to the general financial position of the harbour commission.

It often happens, since harbours notoriously do not pay if you count everything, that in the national or area interest the Government, under present policy, will assist by way of capital financing with federal funds through the Department of Public Works. If the harbour commission has the earning capacity but not the available cash, the Government stands ready to make a loan at the preferred Government rate of interest to finance the harbour commission's share. All this assumes the case where a harbour commission cannot pay all its costs, when you count everything, including interest and depreciation on the capital works, and that sort of thing. Then the federal Government stands behind them. Unless we make a serious miscalculation somewhere the chances of any harbour commission assuming burdens that it cannot carry with existing revenues is not likely to arise, so we have not many problems in taking care of current account deficits because we have tried to plan in such a way they are not incurred.

Senator CRERAR: When you say, "We try to plan," do you mean the Government?

Mr. STEAD: The Government and commission jointly. These things are very much matters of mutual co-operation. Indeed, I do not think the thing can work otherwise. The federal Government has a certain role under the B.N.A. Act for navigation and shipping, and the city or cities and industrial complexes have an interest in the port.

Senator CRERAR: As I understand the situation in Toronto, the Toronto Harbour Commission under this legislation is a creature partially of the federal Government, because you appoint some representatives, and partially of the city, because it appoints some representatives.

Mr. STEAD: Yes.

Senator CRERAR: In the event of a clash of interests, who is paramount, the city or the Government?

Mr. STEAD: The commission is an independent body under the statute.

Senator CRERAR: I quite understand that, but if a situation arises where there is a clash of interests between Ottawa and Toronto, who has the final word?

Mr. STEAD: The city has the majority of representatives on the commission, and they are the ones who normally deal with us on these matters. They can propose new works, or what-have-you. It does not always follow that the federal Government is in a position to accede to those requests, certainly not at the time they are put up. Issues of that sort do arise and they have to be worked out by negotiation. But as far as control of the commission is concerned, in the case of Toronto the city has the majority of appointees.

Senator HOLLETT: At the present time?

Mr. STEAD: Yes.

Senator MACDONALD (*Brantford*): Under their statute.

Senator HOLLETT: But not under this act?

Hon. Mr. McIRATH: They do not come under this act.

Senator DUPUIS: Does the port of Montreal fall within this act?

Mr. STEAD: No, it is under the National Harbours Board. It is a separate act, and this act does not have any bearing on it.

Senator LAMBERT: May I ask if the department, through any of its branches, issues or can give an annual report showing what the financial status of all these harbours really is, showing capital contributions from the federal treasury as well as the amount of revenue that may have accrued to the credit of the local harbour board through its operations?

Mr. STEAD: No, they are independent corporations and issue their own statements. One of the problems is that sometimes, for perfectly good local and historical reasons, they adopt different practices. There is no compendium of that sort because they are independent corporations under the statute.

Senator LAMBERT: I have no doubt there is a record of the subsidies or payments that are advanced from the federal treasury to these harbours. That would be interesting to know, because we would then have some idea as to whether the operations of these harbours locally are self-supporting.

Mr. STEAD: We have records of Public Works expenditures in these harbours.

Senator LAMBERT: I think it would be interesting to have that, to have an idea of what the financial obligations are in this connection, because in my discussions in reference to this bill it was suggested very definitely that an effort should be made to stimulate more enterprise and more initiative in the harbours, and not only in relation to those listed but in the case of future ones also, towards expanding their usefulness and putting themselves on a self-supporting basis, if possible. I think we could then get an idea as to whether that is a possibility or not.

Mr. STEAD: There are two representatives from the Department of Public Works here. They may have figures of this sort. Would Mr. Stothart or Mr. Ryan have that information?

Mr. W. W. Ryan, Supervising Construction Engineer, Department of Public Works: The following are the expenditures which have been made by the Department of Public Works since 1912 on commissioned harbours across Canada. The year 1912 has been arbitrarily chosen as the date from which these expenditures were made, for that is about the year the first commissioned harbours were formed. The total expenditures made, in alphabetical order, are as follows:

Belleville, Ontario:	\$ 525,532—
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The CHAIRMAN: Just give us the figures in round thousands.

Mr. RYAN:

Hamilton, Ontario:	14,935,468
Lakehead, Ontario:	36,819,000
Nanaimo, B.C.:	3,407,000
New Westminster, B.C.:	26,520,000
North Fraser:	3,969,000
Oshawa, Ontario:	2,262,000
Port Alberni, B.C.:	2,567,000
Toronto, Ontario:	24,007,000
Windsor, Ontario:	563,000
Winnipeg, Manitoba:	453,000

Senator HAYDEN: There are two special act harbour commissions mentioned here, Winnipeg-St. Boniface, and the Lakehead harbour. Are there two municipalities functioning in relation to those commissions or just one?

Mr. STEAD: In the Lakehead there are two, and in Winnipeg-St. Boniface there are about five; something like that.

Senator ROEBUCK: Is the harbour within all those municipalities or is it within one or more of the municipalities but serving all of them?

Mr. STEAD: I think they are all bordering on the river, sir. The river is under local control.

Senator KINLEY: Is the Lakehead commission situated at Fort William?

Mr. STEAD: Fort William and Port Arthur. It is a joint commission. I gather the boundaries of the harbour at the Lakehead extend into the lake from the extremities of Port Arthur on the one hand and Fort William on the other and inshore along the edge of the actual water harbour.

Senator KINLEY: They are twin cities.

Mr. STEAD: That is right.

Senator CROLL: Mr. Stead, the figures given by Mr. Ryan is the Government contribution since 1912. Have you got the local contribution figures from that time?

Mr. STEAD: No, sir.

The CHAIRMAN: Is it true to say that in the case of each of these 11 harbours the municipalities have made contributions?

Mr. STEAD: Not the municipalities. But normally speaking the municipalities give property rather than cash when these commissions are set up.

The CHAIRMAN: I mean contributions in cash or kind.

Mr. STEAD: Well, the situation is rather that the waterfront properties are usually contributed by the city when the commission is set up, and after that the commission is selfsustaining from its own revenues.

The CHAIRMAN: Therefore the answer to my question is yes, is that right?

Mr. STEAD: In the beginning, yes. They give property, but they don't contribute any cash.

Senator CROLL: That does not apply to Toronto.

Mr. STEAD: I understand Toronto guaranteed bonds and payments on bond interest some years ago.

Senator ISNOR: May I ask Mr. Ryan a question with regard to harbour commissions. He gave figures dating back to 1912. In view of the fact that the Lakehead Harbour Commission was not established until 1958, does that mean that in the last five years approximately \$13,500,000 was expended in that area?

Mr. RYAN: No.

Senator ISNOR: Tell us what it does mean.

Mr. RYAN: These sums were expended in the 35 years covered, and they take in the breakwater in the river. The recent expenditure in the development was \$8½ million. The harbour commission was not formed until 1958, and the expenditures I have given are those made by the federal Government in that location.

Senator LAMBERT: Would that have been done under the old Department of Marine?

Mr. RYAN: Perhaps Mr. Stead can answer that.

Mr. STEAD: We had a harbourmaster until the commission was set up in 1958.

Senator LAMBERT: But the department, was that the Department of Transport?

Mr. STEAD: The Department of Marine, I would think.

Senator REID: I think the amount given for New Westminster in British Columbia was roughly \$26 million. Does that include all dredging?

Mr. RYAN: It includes all expenses in the main arm of the Fraser, and does not include any expenditures made on the north arm. It includes some things on the Fraser River main arm and at such places as Ladner, Gunder-son Slough, Sunbury, Port Mann, Steveston, Annacis Dyke, Tannery Road, Brownsville, Brunette River, Annacis Slough, Benson Road, Gordon Road,

Port Coquitlam, Port Kelles, McAdam Road, Hammond, Haney, Konaka Landing, and Albion Dykes. It takes in any structure, float or dredging carried out by the federal Government within the confines of the limit of the New Westminster Harbour Commission.

Senator ISNOR: I should like to follow through to get the real picture of the expenditures on harbours. I am coming back again to the Lakehead Harbour Commission and I should like to know if there is a division between expenditure and investment. In the case of Toronto they have a very large investment—and I use the word "investment" deliberately—from which they receive revenues. Is there any division in your figures as between expenditure and the amount spent in a capital manner?

Mr. RYAN: These capital expenditures go back to 1958. I have no individual expenditures for the Lakehead, Ontario, since 1958. In 1958 it was \$1,219,000. In 1959 it was \$780,000; in 1960 it was \$1,072,000; in 1961 it was \$3,231,000; in 1962 it was \$5,284,000, and in 1963 it was \$1,089,000. These are capital expenditures basically on Lakehead development plus basic maintenance of the harbour.

Senator ISNOR: That is roughly speaking \$14 million expenditure on capital.

Mr. RYAN: If you consider dredging as a capital investment, and making the harbour suitable for use.

Senator ISNOR: Where harbours do not require any expenditure for dredging, as is the case with certain Ontario harbours on which you have spent very large amounts, what is the situation? You spend \$12 million on expenditures of certain types. That is \$12 million spent on capital expenditures, leaving a balance of \$14 million for dredging and so on, is that correct?

Mr. RYAN: Yes.

Senator THORVALDSON: While we are on general questions, I was wondering what was the procedure with regard to harbour management in places like Vancouver where the dock facilities extend right inland, and also in Saint John, New Brunswick, in Halifax and many other harbours which are not included.

Hon. Mr. MCILRAITH: They are National Harbours Board harbours. Also it applies to Quebec, Montreal, and Three Rivers.

The CHAIRMAN: This bill has nothing to do with National Harbours Board harbours.

Senator HOLLETT: I was wondering about the case of St. John's, Newfoundland, where the federal Government spent \$15 million, and where in the appointment of the commission neither the provincial Government nor the municipality has any say whatever unless designated by the Governor in Council. The majority of the members are appointed by the Governor in Council, and then the Governor in Council designates who shall appoint the remainder.

Hon. Mr. MCILRAITH: No, and perhaps I might make that clear. The very thing that is sought under this legislation is that, to bring a local authority in, there must be an operating harbour, and all that the Governor in Council can do with respect to these harbours, in unorganized territories, is to designate a province instead of a municipal authority. Churchill comes under the National Harbours Board, but it would be an example of where there is not a municipal authority set up, and where you would have to have the province.

Senator HOLLETT: I did not quite catch your last words.

Hon. Mr. MCILRAITH: There are many harbours among the 300 that I have described that are in places where there is no municipality as such, and the only power is that, in such a case, the federal authority can designate who will appoint the local authority—that is, whether it is a province.

Senator HOLLETT: But conceivably in a place like St. John's the municipal council which controls St. John's could have no say whatever.

Hon. Mr. McILRAITH: No, that could not happen.

Senator HOLLETT: It could happen under section 5.

Hon. Mr. McILRAITH: No, that is the very point. It is only a majority that can be appointed by the Governor in Council.

Senator HOLLETT: But the Governor in Council recommends the others.

Hon. Mr. McILRAITH: That is right.

Senator HOLLETT: And he does not have to recognize the municipal council or the provincial Government.

Hon. Mr. McILRAITH: The whole intention was that it should be the municipal council. This power is to meet the many cases where there are no municipal councils.

Senator HOLLETT: Probably that could be amended. I think the provincial Government and the municipal council should have some say in respect of the harbour of St. John's.

Hon. Mr. McILRAITH: The whole intent of the act is that they should have, and, if there is a point to be looked at with respect to this, I will have the legal officers look at it.

Senator BAIRD: They do not have to come under this act unless they want to.

Hon. Mr. McILRAITH: That is right.

Senator BAIRD: I doubt if the city of St. John's would be able to come under it because it has not a full charter.

Senator HAYDEN: Mr. Minister, you did not mean that, because St. John's is not one of the harbours incorporated by special act and included in the 11 in the schedule.

Hon. Mr. McILRAITH: I am sorry. Thank you, Senator Hayden.

Senator HAYDEN: And the Governor in Council can create—

Hon. Mr. McILRAITH: Yes, I am sorry I overlooked that.

Senator REID: May I ask the Minister if it is something new that the Governor in Council should appoint the majority. Since when did the provincial Government have any say?

Hon. Mr. McILRAITH: This is put in to cover the case where there is no municipal authority. That is the point. There are many areas in the country where there is not a municipal authority such as we understand it in other provinces.

Senator CRERAR: Mr. Chairman, there is a point that bothers me, and puzzles me. The composition of the Toronto Harbour Commission, according to the minister's statement, is controlled by the city council. It has a majority of the representatives. Now, on the other hand—and this is what puzzles me—this act provides that the commission can do nothing at all without the approval of the Governor in Council. We find that in section 10, and particularly in the section dealing with by-laws which says that a commission—and this would apply to the Toronto Harbour Commission—may, with the approval of the Governor in Council, make by-laws. I cannot quite understand that. If you have a body set up on which the city has the majority of representatives why should it be necessary for the Governor in Council to veto or approve its by-laws?

The CHAIRMAN: Senator Crerar, the Toronto Harbour Commission does not need to come under this act unless it wants to. It is only if it applies section 30

of the bill that it comes under this act at all; otherwise it carries on as it does at present with, as you say, the majority of its members being appointed by the Toronto City Council.

Senator CRERAR: But this means that its by-laws—

Senator MCCUTCHEON: No, it does not. Under the act incorporating it all the by-laws of the Toronto Harbour Commission have to be approved by the Governor in Council before they come into effect.

Hon. Mr. McILRAITH: That is right. They are approved at the moment. There is no change in this.

Senator REID: Section 27 says:

The Governor in Council may order any Commission established pursuant to this Act to wind up its affairs

Senator CRERAR: Mr. Chairman, it is 11 o'clock, perhaps we should hear the outside interests who wish to appear before the committee at this time.

The CHAIRMAN: Does any senator wish to ask any further questions?

Senator REID: I have not received an answer to my last question. Section 27 reads:

The Governor in Council may order any Commission established pursuant to this act to wind up its affairs and may by proclamation dissolve any Commission in respect of which such an order has been made.

Hon. Mr. McILRAITH: Well, there are two such cases that I can think of at the moment, Senator Reid. One is the case of where a local authority and the harbour commission wanted to come under the National Harbours Board Act. If it wanted to make that transfer then there is required to be some method of terminating the existing harbour commission.

The other case is that of a newly incorporated harbour commission brought under this act and which did not develop, because of some economic change in the area, as it had seemed to promise to develop. It may be desired to put it back under a local harbour master instead of having the commission carry on because there is no business for the commission to do. This provides for a method of terminating the authority of the commission.

Senator HAYDEN: Mr. Chairman, there is a question which I think is a legal question more than a factual one. I do not know whether it is proper to ask it of the Minister or of Mr. Fortier. However, I will put it to the Minister because I know that the Minister can handle it. Under section 3 the Governor in Council may by proclamation establish a Harbour Commission for any harbour in Canada. That would include any harbour other than the 11 that are now incorporated?

Hon. Mr. McILRAITH: Yes.

Senator HAYDEN: And it would, therefore, include harbours which are presently under the jurisdiction of the National Harbours Board.

Hon. Mr. McILRAITH: That was not intended. I will have a look at that, but certainly that was not intended.

The CHAIRMAN: I would have thought, Mr. Minister, that section 3 should be amended to exclude harbours which are now under the National Harbours Board and the 11 harbours which have already been especially incorporated.

Senator HAYDEN: That is right.

Hon. Mr. McILRAITH: No, in the latter case some of these may want, and some of them do want, to come under—

Senator HAYDEN: I think you have to include the National Harbours Board and say that it is subject to section 30.

Hon. Mr. McILRAITH: Yes, I will look at that point.

The CHAIRMAN: Yes, I think there should be an amendment to section 3 along those lines. Are there any further questions of the minister?

Senator ISNOR: Has the minister completed his statement?

Hon. Mr. McILRAITH: Yes.

Senator CROLL: May I just ask one question? If, as in the case of Toronto and, I believe, Hamilton, where the city council thinks or feels that it has a considerable interest—these are large ports—and that they ought not to come under the act, is there any reason why they should not be at this time excluded?

Hon. Mr. McILRAITH: I am not prepared, senator, to accept your premise to this extent, that the correspondence so far has indicated some rather wide misunderstandings of the act. I do not want to group the two cities either, because their harbour situations are quite different, in point of fact.

If they do not want to come under the act I do not see any way (a) how Toronto could be put under the act if it did not want it, and (b) I do not see any situation where it is conceivable that in a municipality not wanting a harbour brought under the act that it could be done, because a harbour cannot operate in the case of built-up commercial centres like that without the complete support of the municipal setup. To make the harbour completely effective their complete support is required, and it is the intention to get their full co-operation in the operation of the harbour.

Senator CROLL: Assuming a misunderstanding—and I do not know whether it exists or not—between the Harbour Commission and the city council, and assuming the city council sees it in a different light, are we to ignore the city council?

Hon. Mr. McILRAITH: No, it would be inconceivable that in the case of a great commercial city like that, that you could operate a harbour with the city council's appointees having, in effect, gone contrary to the wishes of the appointors. It is inconceivable that you could make it go against the whole interests of the city council. I cannot conceive of that situation.

Senator CROLL: Let me go one step further. If the mayor of the City of Toronto and the mayor of the City of Hamilton indicate that the city councils are opposed to their commissions coming in, and so indicate, is there any reason for not excluding them so that the conflict does not arise?

Hon. Mr. McILRAITH: Yes, there are two reasons in answer to that. One is that this is intended to be continuing legislation. The whole difficulty which we have had is that there was no continuing legislation to deal with this situation. That is one point. They might be that way this year, and next year they both would have exactly the same view. Therefore, why should you take away the authority of the federal Government to deal with the situation, when they both come to the same view, merely because they are not in the same view at this moment.

There is another difficulty there when you are dealing with municipal authorities, as you will see from some earlier questions. Let me take an example of one very small municipal authority, that is, small related to the big complex of municipal authorities. I think there would be five—about 14 municipalities in the New Westminster harbour legislation referred to.

Senator HAYDEN: I am not suggesting that the tail is going to wag the dog because in this schedule in New Westminster you have 14 and in the lakehead you have two; but in the other cases you have a single municipality.

Hon. Mr. McILRAITH: No, that is the point I am making; you do not have. Senator HAYDEN: In Toronto?

Hon. Mr. McILRAITH: I do not know what the situation in Toronto is. I hope the honourable gentlemen here will forgive me. There is Metropolitan Toronto and the Corporation of the City of Toronto, and you have the other related things. What I think you require is the technique that gets the support of the whole area. Certainly, as I understand it, it was the Corporation of the City of Toronto that owned the property included in the harbour area.

I do not want to digress into a discussion of what the local authorities are in Toronto—for two reasons. One is that I am not an authority on it. I simply do not know it well enough; and the other reason is that their experts who do know are here.

Senator HAYDEN: I want to get your viewpoint. If, under section 30 any improvement will require the consent of the municipality or, if more than one municipality, the consent of the municipalities adjoining the harbour that is incorporated and listed, then you have done away, I would say, with any possibility of any objection from any city that is adjoining any harbour.

Hon. Mr. McILRAITH: Take New Westminster, where there are 14 municipalities?

Senator HAYDEN: That is their problem.

Hon. Mr. McILRAITH: No, it is not their problem. It would require a vote of one out of the 14 to veto it—and that one could be the farthest one, a small municipality the farthest away.

Senator HAYDEN: I would rather do that than have a veto of the other nine.

Senator CROLL: Then take Hamilton. Out of three commissioners, two are appointed by the federal Government, and then the municipality has nothing at all to say on the decision of the federal Government.

Hon. Mr. McILRAITH: Your point is probably well taken on Hamilton, because it is a single municipality.

Senator CROLL: That is, the chief objection, as I know it now, seems to come from those two large adjoining municipalities—Toronto being just a sleeping out place for Hamilton, or that is what Hamilton says.

Hon. Mr. McILRAITH: The attempt in this is to get general legislation to cover those with no harbours and those coming under the 11 private acts. There are variations in those 11 private acts, and I pointed out one of them this morning, a very severe limitation. There are other difficulties, but they are not quite as bad.

It is certain that there is not an accounting control which, in the light of modern accounting methods, is responsible treatment where public funds are being expended. That problem causes real concern. Some harbour commissioners or harbour boards have excellent accounting, with good records and all this sort of thing; and in the case of others it is a matter of very grave concern.

Senator McCUTCHEON: We assume that the Toronto harbour commissioners have good accounting records; if they have not, it is the responsibility of the Governor in Council to direct them to have them and how they should keep their accounts.

Hon. Mr. McILRAITH: He cannot do that in the present position.

Senator McCUTCHEON: Under the Toronto act?

Hon. Mr. McILRAITH: No.

Senator McCUTCHEON: It says:

account for the same annually to the Governor in Council in such manner—

Senator LAMBERT: In the possible implementation of this legislation, has any consideration or inclusiveness been connected with the passage of the procedure as to who will take the initiative? Which authorities will take the initiative in bringing about the reforms which are implied in the legislation? Will it be the Department of Transport or will it come from some other source?

Hon. Mr. McILRAITH: It is intended that it would come from the local authorities.

Senator LAMBERT: Who, for instance? How many of these?

Hon. Mr. McILRAITH: There is one thing I ought to point out. At the present time there is one harbour commission, which I would prefer to leave nameless, where their meetings are conducted without all the harbour commissioners being informed.

We have no control over the accounting at all and that situation has received a lot of attention. We are operating without authority to get the control that I believe all public people would want over that situation.

Senator LAMBERT: May I follow up that question which I asked? In discussing this matter, before the bill was presented, I was credibly informed that most of these harbour commissions are barely keeping their heads above water.

Hon. Mr. McILRAITH: That is right.

Senator LAMBERT: I think that is a very important point which more light should be thrown on; that is, the financial spending of these harbours.

Hon. Mr. McILRAITH: The point, Senator Lambert, in dealing with that is that we do not have an effective way of getting the kind of detailed information required in these 11—I should not say 11, because some of them are excellent and do provide the information. But in others, we simply cannot get them, and have not the authority to have a proper accounting system put in, or do a thing about it.

Senator LAMBERT: I submit that that consideration is a vital factor in relation to this.

Senator HAYDEN: In the Toronto Harbour Commissioners' Act, 1911, section 31, there is a specific provision which says:

The Corporation shall keep separate accounts of all moneys borrowed, received and expended by it under the authority of this Act; and shall account for the same annually to the Governor in Council in such manner and form as he sees fit to direct.

Is that provision in the other 10 special acts?

Hon. Mr. McILRAITH: I do not think so. They vary.

Mr. STEAD: They are not as specific; and the problem is to get the details in some cases. That was the object of the bill.

Senator HAYDEN: Is there a section 31 or something similar in other cases?

Hon. Mr. McILRAITH: There is no similarity. Incidentally, if you read it correctly I think it requires them to report; but in any event they do report.

Senator HAYDEN: It requires them to report and account in the manner the Governor General wants them to.

Hon. Mr. McILRAITH: So that there may be no doubt about it, I say there is no accounting difficulty in the case of the Toronto Harbour Commission at any time.

Senator HAYDEN: That is why I wanted to know.

Hon. Mr. McILRAITH: There are some bad problems in others.

Senator WALKER: Under section 30 you can say that the majority of the harbour commissioners can take the whole harbour out of the act and put it under the federal act. That is under section 30.

Hon. Mr. McILRAITH: They are both federal acts. But it is admitted that under this it is legally possible for the Toronto harbour commissioners, having taken a certain step, and the federal authority, the Governor in Council, assuming it was of like mind, it is legally possible for them to take that and bring it under this bill.

Senator WALKER: A result of that would be, first, that the revenue or surplus, if any, under section 15 of this bill would go to the Receiver General of Canada rather than the City of Toronto treasurer. That is the first effect. The second effect, you will agree, is that the authority or control of the harbour would pass from the city council to the federal authority. I ask you, Mr. Minister, why should you not simplify this bill? We have our own act, a very successful act, of 1911, where we have our own revenue and if there is any surplus we get it ourselves. The city council has three out of five. Why take control away from the City of Toronto and put in this possibility in section 30?

Why not exclude Toronto from this schedule so as not to become part of the act; otherwise you will be putting the tail before the horse. The Toronto harbour commissioners at any time with a majority could take it right out of the control of the city council. The revenues would go to the federal Government and the federal Government from then on would control the harbour commission. Why not simplify this thing as far as we are concerned? We have a \$78 million investment. Why not take it out of the schedule?

Hon. Mr. McILRAITH: You have put about 12 or 15 questions, and one simple one at the end. I do not think, however, I should let the premises of the other questions go unnoticed. Your last question was a very important one and goes to the root of the matter. However, I do not like the others to go on record unanswered. In one of your questions you stated there were no surpluses there. Secondly, I cannot imagine a situation where the federal Government is going to take over and try to run the Toronto baseball club. It is as simple and harsh as that.

Senator CROLL: Nobody else is either.

Hon. Mr. McILRAITH: I do not want the questions which Senator Walker put mixed up with the very important question he raised at the last and which latter question involved the earlier questions he put.

Senator WALKER: I am not worried about the baseball club, but about the City of Toronto. Is there any question that if the majority of the board will not come under this act then the federal Government will henceforth, by reason of its power to appoint three of the five members, control the harbour commissioners?

Hon. Mr. McILRAITH: No. But I would like to answer the questions you put, having to do with surpluses, and so on, the premises of which I cannot accept, and—

The CHAIRMAN: Senator Roebuck, I think?

Senator ROEBUCK: I wanted an opportunity—

Senator HAYDEN: I do not think the Minister finished his answers to these questions. I want to hear the answers to all the questions.

Senator ROEBUCK: I will wait.

Hon. Mr. McILRAITH: The last question, to my mind, was the one of major importance. I wanted to indicate clearly that with regard to the several questions posed and inferentially answered, I do not necessarily go along with them. However, the last question was a very real one; and it is theoretically possible under this act, and I cannot say otherwise, that—

Senator ROEBUCK: May I ask—

The CHAIRMAN: Order. Have you finished, Mr. McIlraith?

Hon. Mr. McILRAITH: It is theoretically possible if we have a situation where the Board of Trade representative and the Government representative and one or more of the city appointed representatives on the harbour commission voted to come under this act took that step in accordance with the act—the bill, and the federal authority also agree that it was a good thing, that they could have the Toronto harbour come under a commission appointed under this bill. That is the answer to that.

Now, you will note I did not deal with what would happen to certain property rights, and so on, that are in the harbour; and that was the point I wanted to indicate about Senator Walker's earlier questions. In Toronto harbour there are quite complicated questions of property ownership where the federal authority, I think it is quite fair to say, has no property ownership interest at all. There is a situation there where by reason of the history of the development of the harbour there are vast areas of good commercial property which I cannot imagine any federal authority claiming any ownership control of at all; and all that question of delineation of the harbour would have to be in the hypothetical question posed by Senator Walker. That eventuality would have to be looked at; because I just cannot conceive of a situation where the federal authority would claim certain of that property which is of a commercial nature but because of the earlier history was in the harbour area, but which because of reclamation and commercial development, is now far removed from the harbour area itself.

The CHAIRMAN: Mr. Minister, you said in your earlier remarks that the federal Government would not think of going ahead without the consent of a municipality. Would it not be simple to amend section 30 by adding that the consent of the municipality be required?

Senator ROEBUCK: That is the question I would like answered. Why not add that?

Hon. Mr. McILRAITH: I do not think that would be the remedy. We are talking about Toronto, a well-run commercial harbour, not about the problems that arise in smaller harbours where there are a great many municipalities—and real accounting problems.

Senator ROEBUCK: Well, that should be introduced in the legislation at Toronto, if that is necessary.

Hon. Mr. McILRAITH: Yes, that may be the solution. Then there is this question of property ownership in the Toronto harbour. The city has a very heavy interest—

Senator HAYDEN: That might include Toronto and Hamilton.

Hon. Mr. McILRAITH: I do not agree that Toronto and Hamilton can be grouped together; they are different problems.

Senator MACDONALD (*Brantford*): There is another important harbour. We have been hearing about Toronto harbour almost all morning; but there is another one close to the City of Brantford, namely, that of the City of Hamilton. I should like to know how the commission is set up there. Is it a fact that there are three commissioners on the Board of Harbour Commissioners of Hamilton and that two of them are appointed by the federal Government and only one by the City of Hamilton?

The CHAIRMAN: That is right, Senator Macdonald. In section 6 of the Hamilton Harbour Act of 1912 it says: The Corporation shall consist of three commissioners, one of whom shall be appointed by the Council of the City of Hamilton and two by the Governor in Council.

Senator MACDONALD (*Brantford*): That puts a different aspect on that.

Hon. Mr. McILRAITH: There is one other difference. The Toronto act has been more or less kept up to date. The Hamilton act is an old one and is very deficient in its provisions concerning accounting controls.

Senator MACDONALD (*Brantford*): But under the bill before us the two commissioners appointed by the federal Government could conceivably vote to bring the Hamilton harbour under the new act.

Hon. Mr. McILRAITH: Yes, that is right.

Senator HOLLETT: Mr. Chairman, there are representatives here who wish to speak on behalf of their own harbours, such as the Mayor of Toronto.

Senator MACDONALD (*Brantford*): What about the Hamilton representative?

The CHAIRMAN: If the committee is ready to proceed with the hearing of these submissions, I think we should proceed first to hear His Worship the Mayor of Toronto, or his counsel, whichever of the two wishes to speak. I welcome His Worship the Mayor of Toronto.

His Worship Mayor Donald D. Summerville, Corporation of the City of Toronto: Mr. Chairman and honourable senators: I have prepared a few brief notes. I am quite sure that the honourable gentlemen are quite familiar with the bill now and the City of Toronto's position; but on behalf of the council of the Corporation of the City of Toronto I should like to thank you very much for allowing us to present our case here this morning in respect of Bill S-38.

I should like to remind you that in 1911 it was the City of Toronto that petitioned the federal Government to set up the present Toronto harbour commissioners and to establish that act. I have read with a great deal of interest the speeches in the Senate relative to the act and as to the city's objections.

I would like to point out to the senators this morning, Mr. Chairman, that there is a considerable investment in the harbour lands and in the harbour itself by the City of Toronto. I heard some capital figures being used here this morning; and I think, Mr. Griffith, if my memory serves me right, that we have issued in debentures about \$54 million since 1911, of which the City of Toronto itself guaranteed \$30 million.

The CHAIRMAN: You are referring to the harbour commission?

Mayor SUMMERVILLE: Yes, of the City of Toronto. I believe the federal Government was involved to the extent of about \$24 million. The City of Toronto through its tax rate alone paid for some of the debenture debt when the harbour commission was not in a position to look after its own financing in earlier years.

Senator REID: In what year was that?

Mayor SUMMERSVILLE: This is over a period of years from 1911 to the present date.

Senator ROEBUCK: Have you those figures?

Mayor SUMMERSVILLE: \$54 million.

Senator ROEBUCK: The amount of debentures you took up?

Mayor SUMMERSVILLE: The harbour commission itself or the City of Toronto paid off \$30 million.

Senator ROEBUCK: You guaranteed \$30 million.

Mayor SUMMERSVILLE: That is right.

Senator ROEBUCK: And you paid it?

Mayor SUMMERSVILLE: The City of Toronto guaranteed \$30 million, the federal Government was involved to the extent of \$24 million. It was not involved in the other \$30 million.

Senator ROEBUCK: Did you actually pay the \$30 million that was guaranteed?

Mayor SUMMERSVILLE: From 1927 to 1954 we paid off some \$16,000,000 and the rest is still guaranteed by the City of Toronto.

Senator ROEBUCK: \$16 million is actually paid?

Mayor SUMMERSVILLE: That is right. The city's objections to Bill S-38 are basically twofold: Under the existing Toronto Harbour Commission Act of 1911 the city council appoints three members to the commission, while one commissioner is appointed by the Governor in Council and another is appointed by the Governor in Council but upon the recommendation of the Board of Trade of the City of Toronto.

Mr. Chairman, I understand that even without consent of the city council the harbour commission could bring themselves under this bill, by consent of the majority of the commissioners. We would not even have to have a harbour board meeting.

This could happen and it poses a very serious problem. I think it is fair to say that all governmental bodies from time to time have differences. We have had our differences with our commissioners but the net result has always been a fruitful one for both the federal Government and the City of Toronto. However, it is conceivable that by consent, or by a dispute that might arise between the city council and its appointees to the harbour commission, they could take the Toronto Harbour Commission and its \$75 million worth of land and bring them under the federal jurisdiction.

Mr. Chairman, the matter of surpluses was mentioned. There have been some surpluses paid to the City of Toronto but I do not expect there will be money paid in the next 15 or 20 years considering the development that is going on there now. We have a \$6 million credit rating at the banks at the present time. We have about \$3 million in bonds outstanding now which the City of Toronto has guaranteed. This is something other than in the period I gave you.

Mr. Chairman, if you were to take yourself from Scarborough on our left to Etobicoke on our right, facing south, the whole length of the waterfront—including parklands and beaches and commercial developments—was established by this commission. Some was by land fill and some by acquisition over this

period of time. They are vested in the harbour commission for park uses, and some are vested in the City of Toronto. I can say there was another \$17 million put in there by the City of Toronto and I believe we hold a mortgage on that.

In order to improve the harbour facilities themselves, we recently built a very substantial dock on the Cherry Street side to take care of ocean shipping. I believe we paid 75 per cent of the cost and the federal Government paid 25 per cent. So we have been pretty well a self-sustaining body all the way through. There are certain things that we are required to do under the federal Navigation Act, and I am happy to say that over the years the federal Government has done things, in co-operation with us, which have enured to the development of shipping in that harbour, and I do not want to make light of that.

If Bill S-38 were enacted in its present form the city might lose such measure of control as it already has because of the provisions of section 30 of the bill. This would permit the Governor in Council to elect the majority of the board, wipe out the Harbour Commission Act and substitute the new legislation for it. This is conceivable, and not hypothetical, Mr. Minister, because we recently had a few questions arise as to the cost of a fire boat and whether or not they should extend themselves as far as they have financially, so we could get some of the surplus moneys back to reduce the debt load over the years, which substantially affects the tax rate of the City of Toronto.

Legislation of this sort is so inherently dangerous to the best interests of the city that it should not be allowed to remain in its present form.

Secondly, the Toronto Harbour Commission has produced surplus profits to the city treasury and no provision for that is contained in this legislation.

I know honourable senators appreciate the concern we have in respect to this bill, and I am sure they are qualified much more than I to devise a means of correcting the situation I have outlined to you. However, may I offer this suggestion to you: In the first place I believe the Toronto Harbour Commission Act should be deleted from the schedule, and such act might be referred to in a separate schedule to which the provisions of section 3 and section 30 would not apply. This, of course, would enable the City of Toronto to receive the protection which I feel is required.

If there are any questions, Mr. Chairman and honourable senators, I will try to answer them.

Senator ROEBUCK: May I ask you this one?

Mayor SUMMERVILLE: The technical ones I would appreciate being answered by the general manager of the Toronto Harbour Commissioners, Mr. Griffith, Q.C., and the legal ones by our city solicitor, Mr. Callow.

Senator ROEBUCK: You can answer this one all right. If we provided in the bill that you should not be taken out of the present act and put under this without your council's consent would that not be a complete answer?

Mayor SUMMERVILLE: My instructions from the Board of Control are as I have outlined to you. I could not go further than that. I would leave it to the committee to devise a way or means to protect the city's interest so that the city council would have the control that it now has under the present 1911 act.

Senator ROEBUCK: You are answering my question in the affirmative, are you not? I asked that if we were to require the consent of the city council before action was taken, such as you are proposing, would you be satisfied?

Mayor SUMMERVILLE: I cannot speak for future city councils.

Senator HAYDEN: You do not have to; you are just speaking for the present one.

Mayor SUMMERVILLE: I do not know what the future will bring forth, I can only speak for the council today and only speak within the instructions they have given me as mayor.

Senator HAYDEN: For instance, what if we decided to add a proviso to section 30, leaving section 30 as it is and simply saying: "Provided however that no action shall be taken under section 30 on the consent of the majority of the members of the Toronto Harbour Commission unless the consent of the council of the City of Toronto is also obtained."

Mayor SUMMERVILLE: I might answer that question in this way: why would it be necessary to do that when we have such a harmonious relationship now with the federal Government, and it is a self-sustaining body and the act is working quite well? Why bother changing the present act which is doing such a good job?

Senator HAYDEN: You want to stand alone and apart from this standardization with no provision in that law of which you might avail yourselves if circumstances were different, without coming to Parliament, is that it?

Mayor SUMMERVILLE: I would say that is it. The honourable minister was talking about a group of municipalities and the harbour that serves these municipalities in respect of the unique position that the City of Toronto occupies in respect of the metropolitan government.

The metropolitan government is a federation of municipalities and is not a municipality as one would understand one under the Municipal Act, and the municipality of metropolitan Toronto does not contribute one five-cent piece to the development of the harbour. This is strictly, purely and one hundred per cent a City of Toronto development in co-operation with the federal Government.

The CHAIRMAN: So there is no question of any other municipality being concerned in this?

Mayor SUMMERVILLE: No, sir, I would say we service them, the whole 12 municipalities, and we pay quite a lot of money out on their behalf, but we are not complaining about that at this meeting here today.

Senator CROLL: Mr. Mayor, do you know of any reason why Toronto was not placed under the National Harbours Board when the National Harbours Board was established? That was some time after the war, was it not? I do not remember the year.

Senator LAMBERT: 1935.

Senator HAYDEN: 1936.

Senator CROLL: Yes, in 1936. Was there any reason why Toronto was not taken in at that time? Does anybody know?

Mayor SUMMERVILLE: Mr. Griffith, could you answer that? Would you permit Mr. Griffith, the general manager of the Toronto Harbour Commissioners to answer that question, Mr. Chairman.

The CHAIRMAN: Yes.

Mr. E. B. Griffith, Q.C., General Manager, Toronto Harbour Commission:
Mr. Chairman and gentlemen, that was before my time. My information is that the reason is two-fold. First of all, the city of Toronto was paying the deficits of the port of Toronto at that time. It is my understanding that the other municipalities were not paying deficits they were in a position to pay. Secondly, the port of Toronto, as stated earlier today, was created by an agreement which was ratified by a 1913 Order in Council between the city of Toronto and the Government of Canada. It contemplated a total development, and if you look at section 15 of the Toronto Harbour Commissioners' Act, you will find that special provision is made—and this is only in connection with the harbour commission—for the commission to take properties from the city and administer them for the city. So the Toronto Harbour Commission, in addition to strict port operations, was also in the business of land operation as an ancillary aspect of its port operation by the agreement. I believe those are the two main reasons they were not considered by the Gibb report in 1936.

Senator ISNOR: Your Worship, on page 4 of your brief you state:

Tax revenues to be derived in 1963 will exceed two million dollars.
That is for the city of Toronto?

Mayor SUMMERVILLE: On page 4 of my brief?

Senator ISNOR: Yes, the top two lines.

Mayor SUMMERVILLE: I do not find that on page 4 of my brief.

Senator ISNOR: Well, it is the one signed by you.

Mayor SUMMERVILLE: Oh yes, \$1,880,000.

Senator ISNOR: Is that net revenues?

Mayor SUMMERVILLE: No, that is gross.

Senator ISNOR: That is gross revenue?

Mayor SUMMERVILLE: Yes.

Senator ISNOR: I would like to ask what exemption is allowed by the City of Toronto in regard to buildings, etcetera?

Mayor SUMMERVILLE: Just wait until I get this in context, please, Mr. Senator. It commences on page 3.

Senator ISNOR: Yes.

Mayor SUMMERVILLE:

The Assessment Commissioner for Toronto estimates that the lands and buildings now under the control of the Toronto Harbour Commission have a value in excess of seventy-five million dollars.

That is our Assessment Commissioner's report.

While many of the holdings are tax exempt,...

...and you realize that those parcels of land around the harbour which facilitate the movement of ships under the jurisdiction of the harbour commission we do not derive any revenue from, and there are several that may be put under the harbour commission.

Senator ISNOR: What is the estimated amount?

Mayor SUMMERVILLE: Of those?

Senator ISNOR: Yes.

Mayor SUMMERVILLE: I have not that figure, but I am quite sure M. Griffith can answer that. You can understand this helps port fees, and so forth, and allows them to operate in an economical manner.

While many of the holdings are tax exempt, large parcels of land are leased by the Commission, providing rentals for the Commission and taxes for the City. The amount received by the municipality in 1962 from all harbour commission properties, leased or occupied (including tenants' improvements) was more than \$1,880,000. Tax revenues to be derived in 1963 will exceed two million dollars.

That is the gross tax revenue that comes to the City of Toronto.

Senator ISNOR: The City of Toronto?

Mayor SUMMERVILLE: Yes.

The CHAIRMAN: Any further questions?

Senator ISNOR: Just one more question. On that amount of expenditures, as given by Mr. Ryan, of \$24 million—

Mayor SUMMERVILLE: Yes?

Senator ISNOR: —do you pay any interest on that?

Mayor SUMMERVILLE: Do we pay any interest on the federal Government's \$24 million?

Senator ISNOR: To the federal Government?

Mayor SUMMERVILLE: I do not believe so, no. Neither does the federal Government pay any interest on the \$30 million of ours.

Senator ISNOR: I will put it the other way. They have invested \$24 million for the benefit of the City of Toronto.

Mayor SUMMERVILLE: No, I would not say that. I think they invested their \$24 million, along with the City of Toronto's \$30 million, for navigation generally and the movement of ships, and particularly in view of the Seaway the federal Government, in their wisdom, opened up right through to the Lakehead, many of the cities and municipalities of the province have made it possible to operate it for the benefit of the whole of the Dominion of Canada.

Senator MACDONALD (*Brantford*): Mr. Mayor, I understand from your former remarks that the city council, having read the debates that took place on this bill in the Senate, concluded it would be in their interest not to come under this bill.

Mayor SUMMERVILLE: That is correct, sir.

Senator MACDONALD (*Brantford*): And you were instructed by the council to bring that message to us?

Mayor SUMMERVILLE: That is correct, sir.

Senator MACDONALD (*Brantford*): It seems to me, Mr. Mayor that if the bill were amended according to the proposals of Senator Roebuck and Senator Hayden you would gain your point. I am not saying the amendments proposed by them would be accepted, but if they were accepted you would be out of the bill. But, at the same time, that amendment would preserve to you the right in the future of coming under the bill should circumstances make it advisable for you to do so. So it does occur to me that if the proposed amendment carried—and I am not going to say now that I will support it—you would return to Toronto not only having made the point that council sent you to make, but you would get something in addition to that.

Mayor SUMMERVILLE: This is a point well worth taking into consideration. I am sure this is a point that the solicitor and myself and the harbour commission would like to discuss. I am not quarreling with that point at all.

Senator ROEBUCK: If the harbour commission of Toronto went under the new act would you still be able to collect that \$2 million-odd in taxes, or would it be exempt?

Mayor SUMMERVILLE: Under the new act?

Senator ROEBUCK: Yes. If you passed under the new act would your \$2 million taxes still prevail?

Mayor SUMMERVILLE: This is a hypothetical question.

Senator ROEBUCK: No, it is a very pertinent question.

Mayor SUMMERVILLE: No. With respect, it depends on two or three things happening, honourable senator. It depends on whether the commission take themselves out of the present act and put themselves under the federal Government act. Then they would control the operation of the harbour. Then because they are government-owned lands, or they would be government-controlled, they would not be subject to taxation, and we would have to petition the federal Government for a federal grant in lieu of taxes.

Senator ROEBUCK: In other words, you would not have the right to collect the \$2 million?

Mayor SUMMERVILLE: No. I did not want to say they would do that, but it is possible and conceivable it would happen.

The CHAIRMAN: Would not the answer be this: if the City of Toronto were to agree to have their commission come under this bill, in view of their mixed up situation now as to property the Governor in Council would have to come to an agreement with the city?

Senator ROEBUCK: Of course they would, and on that, at least, would they be protected if the city council had to give their consent?

The CHAIRMAN: And they would not unless they certainly had that protection.

Mayor SUMMERVILLE: We would stand to lose considerable revenue as well when that property was developed. We have a map here. I do not want to take up the time of this committee, Mr. Chairman, but I think we should leave it with the chairman of the committee. It is outlined in red, white, blue, and green, and shows all the park land, recreational land, and the sugar refinery land that some honourable senators from Toronto will understand—things the harbour commission have developed without the co-operation of the federal Government—and a program we have in respect of a \$90 million development. Whether it will ever come to pass I do not know, but I hope it does. This is land jointly owned by the harbour commission and the City of Toronto. We are exchanging land in respect of the island ferry docks. This is the reason the City of Toronto originally petitioned the federal Government to have this type of act for this type of municipality. You can see here just what I mean. From one end to the other there is land vested in the harbour board or the city, so you are not dealing with an ordinary harbour situation, and I think it is so complicated that I would repeat again, Mr. Chairman, that with your permission I would like to see the City of Toronto taken out of this act. I will leave this with you, sir.

The CHAIRMAN: I am sure we are all much indebted to His Worship the Mayor for his evidence.

Now, gentlemen, I asked whether there was a representative of the Board of Trade of Metropolitan Toronto present, and apparently there is not. I have a letter from the Board of Trade signed by the president and the general manager, and seeing that they are not here in person shall I read it to the committee?

Senator ROEBUCK: The mayor spoke about some other officials of the City of Toronto. Perhaps they would like to be heard before we go on to the Board of Trade.

The CHAIRMAN: Have you any submissions, gentlemen, which you would like to make?

Mayor SUMMERSVILLE: Perhaps the committee would like to hear from Mr. Griffith, General Manager of Toronto Harbour Commission, and Mr. Callow, our city solicitor, who are prepared to answer any questions. They are much more familiar with the details than I am.

Senator LAMBERT: The mayor of Toronto has given a pretty complete and comprehensive picture of the position of that city. Personally I would like to ascertain now if the City of Hamilton has anything in common with the position taken by the City of Toronto. Then we could have the details later. I don't wish to interfere with the agenda.

The CHAIRMAN: What does the committee desire? Does the committee wish to hear anybody else from Toronto before we proceed?

Senator ROEBUCK: It depends if they want to be heard.

The CHAIRMAN: They said they would answer questions.

Mr. CALLOW: I should like to correct an answer which I gave to Senator Croll earlier. Senator Croll asked with respect to the appointment of harbour commissioners whether they could be recalled. There is in fact a right of recall. It is contained in the act that they hold office subject to removal, but it must be for cause. It is not just sufficient that something should be done by a Toronto representative which the city would not like. It would have to be for real cause.

Senator CROLL: If they voted in favour of coming under this act, you could conceivably recall them afterwards?

Mr. CALLOW: That would be too late.

Senator ROEBUCK: That would not be a just cause.

Senator CROLL: Can we hear from the mayor of Hamilton?

The CHAIRMAN: There is this submission from the Board of Trade of Metropolitan Toronto. I think it should go on record.

Senator CROLL: We have got copies of it, and it should go on the record. It merely supports the position of the mayor and says, in effect, "Don't forget us."

The CHAIRMAN: Is it agreed, gentlemen, that this submission go on the record without my reading it to the committee?

Some hon. SENATORS: Agreed.

(*For text of submission see appendix "A".*)

The CHAIRMAN: Is it agreed we now ask His Worship the Mayor of Hamilton to give evidence?

Some hon. SENATORS: Agreed.

The CHAIRMAN: This is His Worship Mayor Victor Copps of the City of Hamilton.

His Worship Mayor Victor Copps, Corporation of the City of Hamilton: Mr. Chairman, and honourable senators, I have some copies of a written submission which I will let you have for the record. But I thought in the interests of saving the valuable time of the committee that I would attempt to

summarize the position since it may be somewhat repetitious in view of what has been said about our situation by Senator Croll, Senator Macdonald, and His Worship the Mayor of Toronto. We regard this legislation so seriously, Mr. Chairman and honourable senators, that we have brought most of our members of the Board of Control to the meeting this morning to assist me in this presentation. I would like to say that the city controller, Mr. McCoy, Controller Parker and Controller Morison are here, and we appreciate the assistance of our Members of Parliament, Mr. Munro and Mr. Macaluso, who are also assisting us. I might also say to Senator Quart that it was not possible for us to bring our most charming member of the Board of Control this morning, Controller Ada Pritchard, because she is occupied in another place—not in the other place near by but in the one in Toronto.

The situation of Hamilton is comparable in many ways to that of Toronto, but it is more serious, we fear, from the standpoint that we have a minority on the Board of Harbour Commissioners. We have a three-man board of commissioners set up under the Hamilton Harbour Commissioners' Act of 1912, one appointed by the city council and the other two by the Governor in Council. This means that under the provisions of this act the two commissioners appointed by the Governor in Council could at any time decide to repeal the act under which the original commission was set up and to come completely under federal jurisdiction, and we would be without any representation on or any control of the commission, and we think that under the original act setting up the commission and which was implemented on the petition of the city, council surely should be given some opportunity to decide whether or not it is going to be repealed. We feel that because under this new bill we have only one-third of the representation on the commission the whole thing could be dissolved without our having an opportunity to present our case. I might say that in Hamilton we place great importance on the fact that one of the members of the harbour commission is elected by our city council. In this regard I might tell a little story. Frequently the election for the city representative is contested more keenly than some of the other civic offices in the City of Hamilton. Two years ago when the term of one of our commissioners expired, the term of the city representative, the campaigning was so intense and the electioneering so active, city council was unable to vote a clear majority at the first meeting and it was necessary to hold a second meeting for this purpose in order to resolve this spirited contest in which three candidates were seeking council's favour. I mention this not as a political story but to emphasize that in Hamilton we cherish our representation on the Hamilton Harbour Commissioners, and are very disturbed by any proposed legislation which might deprive us of this representation. Our representative is elected by vote of the city council.

Over the years, as in Toronto, Mr. Chairman, our city council has had many differences of opinion with the harbour commissioners, but these differences of opinion have been resolved amicably in the interests of the harbour, and in the interests of the community. In this we have been very fortunate that the commissioners who are not city representatives have performed valuable services to our city while at the same time carrying out their responsibilities in the interests of the federal authorities by whom they were appointed. While we expect this harmonious conduct of harbour commissioners' business to continue, we would not want to be in the position of being powerless to prevent it should the two federally appointed commissioners decide at some time in the years to come to declare the Hamilton Harbour Commissioners' Act to be repealed and thus deprive the people of our city through their city council of their interest in and their control of the affairs of the commissioners. I suggest that under section 30 this could happen to us much more readily than in Toronto.

In the discussion of this legislation in the Senate on Tuesday, October 22, honourable Senator Hollett said it appeared to him to be a great steal from the City of Toronto. While we know this is not the intent of the legislation, it could have this effect, and I suggest it would be an even greater steal from the City of Hamilton. According to their summarized statement of operations, the total revenue of the Hamilton Harbour Commissioners for the year 1962 exceeded \$1,200,000, and a net profit in excess of \$63,000 was transferred to surplus. After making provision for accumulated depreciation in excess of \$16,400,000 their balance sheet shows an accumulated surplus at the end of 1962 exceeding \$15,600,000.

Section 16 of the Hamilton Harbour Commissioners Act, 1912, provides among other things that any surplus profits shall be the property of the City of Hamilton and shall be paid over by the commissioners to the city treasurer.

The CHAIRMAN: May I interrupt you at this stage. I see under section 14 there is provision that the property taken over by the corporation was the property of the City of Hamilton.

Mayor COPPS: Yes.

The CHAIRMAN: You gave the property originally.

Mayor COPPS: And much more recently that I will outline here, Mr. Chairman. While the city does not appear to have ever required the commissioners to transfer any surplus profits, they have the statutory authority to do so. In fact the statute provides that all books, documents and papers having reference to the management and development of property under the control of the commissioners shall at all times be open for inspection by the Audit Department of the City of Hamilton, and that the commissioners shall report annually all its proceedings in connection therewith to the council of the city.

On the basis of these conditions of the Act of 1912, the city council has been working in co-operation with the Hamilton Harbour Commissioners to develop this great natural asset in the interests of the people of the city.

The city has refrained from exercising its statutory rights to require payment-over of any surplus profits. The city has made grants to the Hamilton Harbour Commissioners of cash in the amount of \$174,000.00, and of land in the amount of approximately 100 acres along the shore of the harbour which I am informed is worth at least \$25,000.00 an acre or \$2,500,000.00. In addition to the shore property, the City in 1948 relinquished its interest in the bed of Hamilton Harbour representing approximately 6,400 acres which includes 390 acres of undeveloped waterlot area inside the harbour headline which I am informed is worth at least \$1,500.00 per acre or \$585,000.00.

While the balance sheet for the Hamilton Harbour Commissioners for 1962 shows assets in excess of \$15,000,000.00, it would be more realistic to say that the city by not requiring payment of surplus profits by land grants along the shore of the harbour, and by relinquishment of its interest in the harbour bed, has a stake in the harbour that represents an asset which it would be more accurate to say is worth \$100,000,000.00.

We interpret Section 15 of Bill S-38 to mean that after specifying a number of items with which the revenue of a commission established under the proposed act shall be charged, provision is made that after providing for the charges so specified other than depreciation, and after providing for the appropriation to the reserves of the commission of such amounts as may be approved by the minister, the revenues of the commission remaining at the end of each fiscal year shall be paid by the commission to the Receiver General.

The combined effect of the application of Section 30 and Section 15 of this bill to the Hamilton Harbour Commissioners would constitute nothing more nor less than expropriation without compensation. We know that is not the purpose of the legislation, but submit with respect that this could be the effect of it. We feel that the people of the City of Hamilton have a stake built up by 50 years of co-operation with the Hamilton Harbour Commissioners to develop our Harbour. A continuous program of port development carried on by successive harbour boards throughout the half century of their administration has been responsible for developing one of the continent's finest natural harbours to the status of a great seaway port.

Each year for the past three years, the gross tonnage moving through the port of Hamilton has exceeded 8,000,000 tons. According to the *Canada Year Book*, Hamilton ranks fifth among the harbours of Canada in respect of the total freight handled and in fact exceeds the port of Halifax, the port of Saint John and the port of Quebec, to name only a few. Our total freight, Mr. Chairman, even exceeds that of the port of Toronto, and I suppose it is timely at this season to mention that this is another field in addition to football in which we are superior to our good neighbours.

The CHAIRMAN: Hold it!

Senator BROOKS: May I ask a question at this point? Have not the revenues of the cities of Hamilton and Toronto greatly increased since the St. Lawrence Seaway was opened?

Mayor COPPS: Yes, sir.

Senator BROOKS: By how much have the revenues of the City of Hamilton increased?

Mayor COPPS: I am afraid I cannot answer that.

Senator BROOKS: Are you anticipating further increases as time goes on?

Mayor COPPS: Yes, business is certainly going to increase—at least, we feel it will increase if we are permitted to assist in the management of it, sir.

Senator BROOKS: And you will get greatly increased revenues from the investment that you have in this particular harbour?

Mayor COPPS: Yes, sir.

Senator HAYDEN: Oh, yes, but they are paying their share of the cost and their share of the general organization.

Mayor COPPS: The operations of this partnership between the city and the harbour commissioners over the years, Mr. Chairman and Senators, has given our city's industrial complex a tremendous interest in our harbour. Water lots sold to some of our major industries by the Harbour Commissioners are being reclaimed as sites for expansion of our big industries. During the discussion of this legislation the other day, the Honourable Mr. Isnor listed the number of men employed in the port of Halifax. Just as these stevedores, checkers, freight handlers and others in Halifax have a stake in the operations of the port of Halifax, so do our many thousands of steel workers employed at our large steel mills and other bay-front industries benefit from the industrial development of our harbour. Expansion programs by the Steel Company of Canada, Dominion Foundries and Steel Company, International Harvester Company and others have been planned on the basis of the continuing co-operative partnership between the city and the harbour commissioners which has assisted these industries in achieving their present size both as taxpayers and as employers.

We are all very concerned about a proposed change which might interfere with the partnership that has worked so well in the general interest. This legislation may be very desirable in its aim to bring uniformity to the administration of harbours in Canada, and to provide machinery for the setting up of harbour commissions in places where none now exist, but it is neither practical nor fair to include the Harbour Commissioners of the City of Hamilton because our commissioners no longer deal just with harbour problems by themselves but are administering a very large business complex. They are in real estate, in cartage, in recreation and amusements and several other fields connected with the harbour and the beach strip. In order to achieve the objectives for new harbours sought by this legislation, it should not be necessary to have it apply to the Hamilton Harbour Commissioners whose operations have now reached such an advanced and large stage.

I might mention, Mr. Chairman, that I heard for the first time from the minister this morning that there was a feeling the accounting procedures in Hamilton were not as the federal authorities would like—at least, I took him to indicate that this was why he wanted to separate the Hamilton case from the Toronto case. I suggest, with respect, that it is not necessary to include Hamilton in this new legislation in order to correct the accounting procedure. Under section 29 of the Hamilton Harbour Commissioners' Act, it is quite in order for the federal authorities to request through the two men they have appointed, and who make up a majority of the commissioners, that the accounting procedure be changed so that it is in line with what is wished by the federal Government. I do not think it is necessary to include the Hamilton Harbour Commission in this act in order to change the accounting procedure.

The CHAIRMAN: In fact, Mr. Mayor, section 29 of The Hamilton Harbour Commissioners' Act reads:

The Corporation shall keep separate accounts of all moneys borrowed, received and expended by it under the authority of this Act; and shall account therefor annually to the Governor in Council in such manner and form as he may direct.

Senator HAYDEN: That is the same as section 31 of The Toronto Harbour Commissioners' Act.

The CHAIRMAN: Yes.

Senator CROLL: Mr. Mayor, if you have finished your submission—

Mayor COPPS: I just wanted to make one observation, Senator Croll, I understood from the minister in his statement earlier today that one of the reasons why he wanted to separate the Hamilton case from the Toronto case was because of his desire to change something in the accounting procedures in Hamilton. I suggest for the consideration of the committee, and for the minister's consideration, that it is not necessary to bring the Hamilton Harbour Commission under the provisions of this bill in order to change the accounting procedures. I suggest that the Governor in Council has already that power through his representation on the Hamilton Harbour Commission.

For these reasons, and the others that I have outlined—because we feel that we have done an outstanding job of co-operation with the federally-appointed people—we would request that the consideration of the members of the committee, and the members of the Senate, be given to our request that reference to The Hamilton Harbour Commissioners Act be deleted from the schedule appended to Bill S-38.

Senator CROLL: Mr. Mayor, you have just finished saying that the city had one representative whereas the federal Government had two representatives. That has been the case from the time the act came into effect in 1912. Now, you were not there—I realize that—but did the city sit on its wrongs, or did the city attempt to do anything about correcting that situation, to your knowledge?

Mayor COPPS: To my knowledge, Senator Croll, in 1926 an effort was made through the city council, I presume by petition to the federal Government, to change the make-up of the commission, and to make it similar to that of Toronto. But, we are not able to discover from the minutes of the meetings, and so on, just what did happen, or why nothing happened. However, there was an effort made in 1926, apparently unsuccessfully, to change the make-up of the Hamilton Harbour Commission so that the city had a majority.

Senator CROLL: That was by resolution of the board of control of that year?

Mayor COPPS: Yes, sir.

Senator ROEBUCK: And you would still like to have that done?

Mayor COPPS: Yes, but today we would settle for being omitted from this legislation. That is something we can go into at another time. We feel very seriously that this is going to work a great hardship on the city of Hamilton; that it is going to deprive us of control of the interest that we have in the harbour. We have a big stake in the harbour, as I have tried to mention, and we do feel that so far as our accounting procedures are concerned that those can be corrected under the existing legislation. We do not think, despite the merits of this new legislation in respect to new harbours and some others, that it should apply to the harbour at Hamilton. I hopefully ask that the members of the committee, Mr. Chairman, give this submission serious consideration, and also that they look with favour on our request that we be deleted from this bill.

Senator CROLL: While you are at it, Mr. Mayor, you will remember that the federal Government talked of spending some \$14 million on the Toronto harbour. I did not quite follow you there.

Mayor COPPS: I have some figures that are in the submission, Senator Croll. Cash grants, \$174,000; land along the shore of the harbour, \$2.5 million; water lots, \$585,000. Of course, there is no price on the land that, as the chairman pointed out, was originally turned over to the harbour commissioners by the city when the act came into being. But, we feel that in dollars, because of the involvement of the harbour development with the industries down there, and their taxes and their employment of so many people, that our interest in it is many millions of dollars. We think it is most essential and most necessary that we be left with this power to try and assist in developing the harbour in the interests of the city and in the interests of our industries that have such a big stake there.

This has a good bearing on the question from one of the honourable senators, regarding the expansion in the harbour since the seaway was opened. There has been great expansion, and expansion in our industries, the Steel Company of Canada at present is under expansion to the tune of \$185 million, and the Dominion Foundries and Steel Company, to something in the nature of \$60 million.

All this development is based on the co-operation they know they can get from the city and the harbour commissioners along the Bay front. We are afraid that any change in that, to take this control out of the hands of the city and put it completely in the hands of the federal representatives, may interfere with that partnership. Quite possibly if the federal appointees did not

have the same interest in the community that we have, it could affect this whole expansion program by the industries, and be very serious in its effects on the economy of the city itself and the whole area. That would include the area from which Senator Macdonald of Brantford comes, the depressed areas, as well as the more prosperous areas.

Senator MACDONALD: (Brantford): I prefer the words "under-developed".

Mayor COPPS: Excuse me. I am using the wrong term there.

Senator ISNOR: Your Worship, what form of operation did your harbour have prior to 1912? Was it under a commission or a local board?

Mayor COPPS: I am afraid I do not know that. Our studies of it began with 1912. I should have introduced our city solicitor earlier, Mr. Foster Rodger—and he can give the explanation.

Mr. Foster Rodger, Q.C.: Prior to 1912 the harbour was administered by the city council.

The CHAIRMAN: Are there any questions to Mayor Copps?

Senator ISNOR: It was a very fine presentation.

The CHAIRMAN: May I ask you this question, Mr. Mayor? You heard the suggestion during the submission of the Mayor of Toronto. If we amended section 30 of the bill to provide that the Hamilton Harbour Commissioners should not come into the new bill without the consent of the city council of Hamilton, would not that meet your objection?

Mayor COPPS: We are a bit afraid that this could be dangerous because of the possibility of the members of the harbour commissioners and a group on the city council wishing to change the harbour commission set-up, getting together and even arranging for council approval very suddenly, when it might be passed without objection. I think we would like to think about that, so that we might determine whether that is assurance enough, that the set-up would not be changed without city council being consulted.

Senator CROLL: Mr. Mayor, at the present time you are in the hands of the two commissioners, let us assume, the two commissioners appointed by the federal Government. Our chairman has said to you that we will give you a further protection by putting this in, not letting them act in that way without the agreement of the city council. It seems to me that we are giving you a great deal more than you had when you first came here and that this is further protection for you.

Mayor COPPS: I mentioned, Senator Croll, that we would like to see the city council have more representation on the board of the harbour commission than they have at the present time and that we would be dealing with that at another time.

Senator CROLL: You have heard that the mayor of Toronto has said they have majority representation there and he is not too happy about it. It is conceivable that you might not be happy, but if we give you the double protection, the further protection, it seems to me that is going even further than you suggested.

Mayor COPPS: My understanding on what has been suggested at the present time is possibly that the harbour commissioners by majority vote could repeal the old act and put themselves under this new bill. This condition might make it necessary that they have the approval of the city council.

Senator CROLL: Exactly.

Mayor COPPS: Yes. I think that would be satisfactory.

Senator ROEBUCK: Is your position under this that if in the future there is a proposal to put this harbour under this board, you would rather come back to us for an amendment of the act?

Mayor COPPS: Yes.

Senator ROEBUCK: That is your position?

Mayor COPPS: Yes.

Senator ROEBUCK: That is a more simple proposition than just leaving it to consent?

Mayor COPPS: Our position is that we would prefer to have our commissioners deleted from this individual bill, carry on as we have been doing, and perhaps make an effort at a later date to have stronger representation of the city.

Senator BAIRD: Both you and Toronto want the same thing; you want to be deleted from this bill.

Mayor COPPS: Yes, that is it—and it is not often we are in agreement.

Senator MACDONALD (*Brantford*): In connection with the representations made by the City of Hamilton, there is one more representation, by Mr. John Munro, Member of Parliament.

An Hon. SENATOR: And there is also Mr. Joseph Macaluso.

The CHAIRMAN: There are two members of the House of Commons from Hamilton here. Does the committee wish that they should say anything?

Hon. SENATORS: Agreed.

Mr John C. Munro, M.P., Hamilton East: Thank you very much, Mr. Chairman and honourable senators. I think the Hamilton position was very well put by Mayor Copps and Controllers McCoy, Parker and Morison. The only reason I wanted to interject for a moment, if I may, is this. Senator Croll and some other senators raised a point about this amendment which may require the consent of the municipal council before this act came into operation as far as any particular harbour is concerned, certainly as far as Toronto and Hamilton are concerned, Mayor Summerville and Major Copps, I think quite rightly so, indicated some reticence about agreeing to this particular type of amendment at this time.

Mayor Copps certainly indicated that it could conceivably happen in a year or two or 10 years from now that the council may make a hurried decision. However, I do not think that is the principal point.

The thing which occurs to me, if I may suggest it, Mr. Chairman, is this. If other harbours under similar circumstances to Hamilton and Toronto did come in under the act and thereby did have more direct federal jurisdiction over them and, in a sense, possibly closer link with the federal Government, and if it should evolve—and these are, I admit, hypothetical considerations—that there was any disparity between federal grants to these harbours that are directly linked under this act with the federal Government, as distinct from municipalities such as Hamilton and Toronto, I think that would have a tendency to exert some very great pressure on councils to come within this act.

I do not think these are considerations to be too lightly looked upon, because if this amendment were put into the act it would be there. It clearly states that the councils can come in under the act if the majority of council

agree. This will possibly always be made obvious to councillors of councils which are not under the act, when they come as suppliants to the federal authorities in the future for Government grants. I think it prejudices the bargaining position of municipalities such as Hamilton and Toronto to have such municipalities under the act.

The CHAIRMAN: Is it not better with the amendment suggested, than the bill as it stands at the moment?

Mr. MUNRO: Yes. I am just giving my argument in complete endorsement of the case put forward by the mayors of Hamilton and Toronto. The desire of Hamilton here is to have Hamilton exempted from the act—period—and not be content with an amendment such as has been suggested here this morning.

That is the only point I wanted to make, Mr. Chairman.

I think it might be repetitious to go over what Mr. Copps has said. I did serve on the city council for many years. I can bear witness to what Mayor Copps says when he says the Hamilton Harbour Commissioners and the city council have worked out their problems very satisfactorily. I think it can be said of the majority of the citizens of Hamilton that they have had their wishes expressed today by the mayor and city council. I would respectfully hope that honourable senators and yourself, Mr. Chairman, would give consideration to exempting Hamilton.

There is one last thing that occurred to me while the briefs were being presented. Mayor Copps went into this point. The present set-up of course is two federal appointed members and one member appointed by Hamilton city council. With this particular suggested amendment in the act, it has been suggested here this morning, namely, that by consent of the council of the municipality, the harbour could come in under the act, it would also be fore-ordained doom as far as Hamilton is concerned, because a majority of the present commissioners are federal appointees—two out of three—and between them they themselves would indicate at least a majority of the commission and thereby can exert considerable pressure at any future time on the city council to take this step.

Mr. Chairman, I wish to thank you and honourable senators for the opportunity to bring this point of view forward. I trust you will give it full consideration.

The CHAIRMAN: Mr. McIlraith, have you anything to add to what Mr. Munro has said?

Hon. Mr. MCILRAITH: No, Mr. Chairman.

The CHAIRMAN: Now, the member for Hamilton West?

Mr. Joseph Macaluso, M.P., Hamilton West: Mr. Chairman and senators, I shall not detain you long. I am in complete agreement with the submissions made by His Worship the Mayor of Hamilton and by Mr. Munro. I also was a former member of the city council and worked closely with the harbour commission in matters of development along the harbour.

The only thing I wish to add is that the City of Hamilton at present has a plan of urban renewal now, and there has been a great deal of co-operation between the planning committee and the planning board of the City of Hamilton and the harbour commissioners. They appeared before the Ontario Municipal Board, and they have also presented briefs to the provincial and federal governments and petitioned for grants to implement plans by way of grants from the Central Mortgage and Housing Corporation.

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The danger, as I see it, is that there are certain zoning features involving the harbour commission property, or adjacent to the harbour commission property, which with the majority of the board of the commissioners voted to come under this new act would mean that the council and the federal Government would have to deal with one another as far as the re-zoning of this property is concerned, and might be detrimental to the City of Hamilton. Not that the federal Government would do anything detrimental, but it might lead to delays and a conflict of interests, as His Worship the Mayor mentioned.

For instance, they are leasing land for recreational purposes and re-zoning land adjacent to the harbour commission property. That is a danger I see. Otherwise, I am in complete agreement with His Worship the Mayor of Hamilton that the Hamilton Harbour Commissioners be deleted from this act.

There is danger here also in section 5, where the Governor in Council may designate local interests or adjacent communities to appoint a commissioner. Hamilton harbour is also adjacent to the town of Burlington, which I understand at the present time is asserting some interest in the Hamilton harbour, and therefore poses quite a situation for us in Hamilton. The town of Burlington really has invested no money in Hamilton harbour.

I leave that thought with the senators, that I am in complete agreement with the submission of Mr. Munro and that of His Worship the Mayor, that the City of Hamilton be deleted from this act.

The CHAIRMAN: I believe the Minister of Transport wishes to say something in respect to the Hamilton situation.

Senator HAYDEN: Before the minister does so, may I suggest that in the light of the very informative discussion, the minister might want to reflect on what has been said. Therefore I suggest that we defer further consideration of the bill.

The CHAIRMAN: There is a further representative to be heard, namely, from the City of Oshawa. I think we could hear all the representatives this morning; and then we shall have all the evidence before us.

Senator HAYDEN: Do you mean a representative of the harbour board?

The CHAIRMAN: The city solicitor of the City of Oshawa.

Senator CROLL: By all means let us hear him.

The CHAIRMAN: Do you wish to make any statement, at the moment, Mr. McIlraith?

Hon. Mr. McILRAITH: Perhaps I should make a short comment on points of difference which I think are important to the senators. Then I would like the matter to stand over in order to give it further consideration.

I want to point out simply that the City of Toronto and the City of Hamilton are different on every point relevant in the consideration of this bill. So far as the City of Hamilton is concerned, if this bill goes through, and assuming it did come under it, the main change would be that the federal Government could have some audit control and could insist on an audit and have an auditor put in there to see what is done with the revenue which comes from the shipping interests. The shipping interests are paying the main part of the revenue, and with those shipping interests paying the revenue into these harbour commissions and thus being charged one way or another, the federal Government should have the right for an audit control by some device.

The only other change that could be made in the Hamilton case is the provision that they could use their funds, if they had any to develop further harbour works. Other than that, I do not know of any change that would be made if they came under this bill.

Toronto is a very different case. It has vast revenues from other properties. Hamilton also does from its amusement park. Probably the municipal officers could tell me whether there was a loss or gain each year, I do not know. However, Toronto has this vast complex of purely commercial properties. The figures in their own annual report of 1962 show lands from which the City of Toronto gets \$5 million. The point I wanted to be clear on is that there is no change at all in the tax position, whether the harbour commission comes under this or not. There may be a little misunderstanding about that.

I would welcome the opportunity to give some consideration to the many points that have been raised here this morning.

Senator CROLL: May I just make one suggestion, Mr. Minister. You say that you are anxious about the accounting practices. I think the chairman read the act indicating you can designate the kind of accounting practices. So that is covered. But take a look at our position. If we attempt to distinguish between Toronto and Hamilton at the present time in situations that are almost alike, I think we will find ourselves in a most impossible position; and therefore I think the minister should give consideration to our position with respect to that.

Hon. Mr. McILRAITH: There are two points arising from your remarks. First, we do not have the right to audit the accounts. The Hamilton act is 1912, and like nearly all the pre-war acts, there are points that are defective in the light of modern ideas.

Senator ROEBUCK: The act could be amended.

Hon. Mr. McILRAITH: Well, we could amend all the acts one after the other, I suppose; but then the difference between Hamilton and Toronto still remains. This Parliament has already discriminated between them by passing two different acts. This bill now before the house is really almost exactly a reprint of the recent bills incorporating harbour commissioners. That is really what it is.

Senator MCCUTCHEON: Mr. Minister, with a majority of the harbour commissioners appointed by the Governor in Council, surely through those representatives you can dictate whatever form of accounting procedures you wish?

Hon. Mr. McILRAITH: That is true, but then you have the problems with these others, and you do not have a uniform system; you get into quite a bit of difficulty. There is a point I think we missed. These are revenues charged to the shipping industry and the charges have become pretty sizeable in the past few years with the greater care in increasing rates, and so on, and also more shipping going through being charged to the shipping interests without the control of the authority insisting on the charges.

Mayor COPPS: Mr. Chairman, I do not want to take up the time of the committee, but some clarification is needed. I want to ask the minister a question. I understood him to say that the only change so far as Hamilton is concerned will be in these accounting procedures, and so on, if the new legislation goes through. It is our understanding of the new legislation that the majority members of the harbour commissioners will be appointed by the Governor in Council and the remainder appointed by agencies and groups decided upon by the Governor in Council. I can assume from this that it is quite conceivable—and I ask the Minister this question—that the change would have this effect, that Hamilton could have no city representation whatever on the new board.

Hon. Mr. McILRAITH: No, Mr. Chairman. That was the point raised early this morning at the meeting.

Mayor COPPS: I suggest under the legislation of the new act here the power for all the appointments is with the Governor in Council, Mr. Chairman, and with him only.

Hon. Mr. McILRAITH: No, that was the point dealt with in the earlier part of the meeting this morning. It was contemplated that the city council would appoint one in the case of Hamilton if it was a three-man commission. I said I would have a look at it to make it quite clear that that was so.

The CHAIRMAN: I think that we would need an amendment to section 5.

Hon. Mr. McILRAITH: Yes, Mr. Chairman. I said I would have that looked at.

Mayor COPPS: Mr. Chairman, under section 5 the Governor in Council decides which of (a) (b) or (c) appoints those representatives to the harbour commissioners and if he decides it is not going to be the city as such we could be without representation. I hope I am right in saying that this is being changed so that the city would have one appointee to the board.

Hon. Mr. McILRAITH: I think that is covered in the minutes.

Senator HOLLETT: I think you told me in answer to my question that that was so, Mr. Minister.

The CHAIRMAN: We have your point in mind, Mr. Copps, and we will see what suggestions can be made to clarify section 5 to protect the interests of the municipality.

Mr. B. W. Morison, Controller, City of Hamilton: Mr. Chairman, I would like your permission to ask the minister one question. Mr. Minister has your department requested from the harbour commissioners of Hamilton an audit of the revenues from the shipping interests which come into the harbour?

Hon. Mr. McILRAITH: I would have to check the correspondence but I will get you an answer to that question.

The CHAIRMAN: I think that is a detail. We should proceed now with the last representation, that the City of Oshawa, represented here by the city solicitor, Mr. E. G. McNeely.

Mr. E. G. McNeely, City Solicitor, City of Oshawa: Mr. Chairman and honourable senators, we appreciate the opportunity of expressing our views on this Bill S-38 and want to assure you that the remarks that I make will be brief in comparison with our size to the two municipalities which have preceded us.

I think that when the honourable Minister of Transport was introducing this bill and giving reasons for it he said that it has been the experience of the department that these harbour commissioners only work properly when you have in effect a partnership between the local municipality and the federal Government. I also submit that that is correct.

In all recent private acts, being six of the eleven, this partnership has been recognized in this way: first of all the municipal council and municipality in which the harbour is located is given the statutory right to make one of the appointments. The other two appointments are made by the Governor in Council or the federal Government. I submit that that is a proper recognition of the relationship; the local interest is represented by in most cases the overwhelming financial interest of the federal Government is also represented by their majority control.

The CHAIRMAN: Mr. McNeely, might I just interrupt you to read to the committee the relative provision of the Oshawa Harbour Commissioners Act of 1960, section 5: It reads as follows:

5. The Corporation shall consist of three commissioners, one of whom shall be appointed by the Council of the City of Oshawa and the other two by the Governor in Council.

Senator CROLL: That is what Mr. McNeely said.

Mr. MCNEELY: Thank you, Mr. Chairman. In addition to that, the interest or position of the municipality is recognized in a couple of other sections of those acts which, while they are minor, do give statutory recognition to this special local interest. One of these provides that the municipal council or its representatives shall have the right to examine at any time the records and books of the commission.

The second is that the commissioners are required, after passing their by-laws, to submit them to the municipal council before they are forwarded to the Governor in Council for approval. I believe they must do that fifteen days before. So that it is recognized that the municipality has an interest in the financial and other affairs of the commission.

It is also recognized that the operations and by-laws of these commissions can affect the municipalities and that the municipality should have those 15 days in which to consider these by-laws and have the opportunity, if they so wish, to make representations as to whether they should be approved or not.

Senator REID: In what year was your harbour commission established?

Mr. MCNEELY: In 1960, by Chapter 21 of the statutes of that year. We are the most recent one.

Senator HAYDEN: The act which governs your commission is very close to the standard one, is it not?

Mr. MCNEELY: Yes, and I am just coming to the part where we think this proposed act could inadvertently do us an injury.

When the act setting up the Oshawa Harbour Commission was passed we turned over to the harbour commissioners certain city-owned land. In fact, we have turned over to the harbour commissioners approximately 55 acres of land in the vicinity of the harbour, and this land has a value of roughly \$250,000. This was city-owned land that we placed under their administration and we have provided that they may use the revenue from this land for harbour development purposes in the future. This land would be much more valuable and the revenue will be a much more considerable factor than it is today. We have done this because we felt that the act recognized the minority partnership interest we had in this commission. Under this new proposal any two of the commissioners, and two of them are appointed by the federal Government, could bring us under the new act. I believe that the Minister of Transport has said that he will consider a provision which would require the consent of the municipality before the harbour commissioners could do that. That would meet our objection if that were done. They initiated the moves to get these commissions, they have a financial stake in them through turning over property, they represent the populations and the areas served by them, and so I think it is reasonable that if these commissions are to be placed under the new act it should only be done with the consent of the municipalities which are now entitled to appoint representatives.

The minister mentioned that such interest in some cases extended to 14 municipalities. That is a problem which can be dealt with. The department can decide what it believes is reasonable, whether in cases where there is more than one municipality that they should provide for two-thirds or one-half of the representation. That is a minor matter of drafting this bill.

Senator LAMBERT: Mr. Chairman, may I ask Mr. McNeely if in the experience of these commissions where there are two appointees from the federal authority and one by the municipal authority, there have been any cases involving dissension or even of opinion in the administration of the affairs of a commission? One would assume that all three would be representative of the community where the municipal council would be interested in the

welfare of that community. Now, why make the invidious distinction between two people who happen to be nominated eventually or finally by the federal Government and one by the council itself? I assume that there is going to be no irreconcilable treatment amongst them. I can appreciate that local politics may have something to do with this.

Mr. MCNEELY: Our experience has been very good. We have had no trouble at all. I think our position would be this: we do not suggest for the moment it is very likely that the federal Government should act in such a way that its two appointees would place themselves under this act without our concurrence. We do not say that. We have confidence in the good faith of the Government. If the honourable Minister of Transport would say he has no intentions of doing that, then we say, "Fine, let's put it in the bill so it cannot be done."

The CHAIRMAN: To summarize, you would be happy with the bill with these proposed amendments to section 30, that the new commission could not act under this new bill without the consent of city council.

Mr. MCNEELY: That is correct, Mr. Chairman. There are just two minor points I would submit for consideration of the committee.

It seems to me that the bodies which under the new act are entitled to members to the commission should have the right of inspection, and I think they should have the right to consider the by-laws of the commission which were given in the five or six most recent private acts which were approved in the form desired by the Department of Transport. I think those rights are reasonable. I think the committee should perhaps consider retaining them in the new act.

The CHAIRMAN: Any questions of Mr. McNeely?

Senator MACDONALD (*Brantford*): Mr. Chairman, I think I should bring the attention of the committee to the fact it was intimated to me that the Winnipeg and St. Boniface harbour commissions would like to make representations. I have not received any representations from them, and I understand the Chair has no representations.

The CHAIRMAN: No.

Senator MACDONALD (*Brantford*): They may come later, but I thought I should bring it to your attention.

The CHAIRMAN: I think, honourable senators, the position we have reached now is that we should adjourn and ask the minister, perhaps with his legal advisers and with our law clerk, to reconsider some of the provisions of the bill which have been under discussion this morning, particularly clause 3, clause 5 and clause 30, and also those clauses in which the British Columbia commissions in their telegrams have made suggestions for certain minor changes. Perhaps we could arrange for a meeting at a further date, say a week hence.

Senator CROLL: Mr. Chairman, may I suggest that while the minister is giving these matters consideration that he gives serious consideration to giving Toronto and Hamilton an "out" from this bill. Go ahead and give them whatever protection they want with respect to the municipal council, but leave these two out of this bill completely.

The CHAIRMAN: That would come under the amendments, of course.

Senator HAYDEN: Mr. Chairman, may I just at this time put on record, so as to call the attention of the minister to it, that I think section 3 should be amended in line with our discussion so as to make it subject to section 30, and also to provide for an exclusion in section 3, excluding the harbours under the National Harbours Board, and also excluding any harbours incorporated by special act other than those enumerated in the schedule.

Then I would suggest that Hamilton and Toronto be struck out of the schedule. I further suggest that in section 5, where the Governor in Council is given the power to designate what bodies may nominate the members, priority should be established for (a). That is, if there is a council the council should do it, and then the (b) should come in in section 5 if council fails to appoint. On that basis you do not need to do anything about section 30.

The CHAIRMAN: Does that meet with the approval of the committee? If at our next meeting the commissioners of Winnipeg and St. Boniface wish to make representations they will have the chance to do so at the adjourned meeting. Is the committee willing to fix an agreed date?

Senator CROLL: At the call of the Chair.

Senator MACDONALD (*Brantford*): At the call of the Chair.

Senator ROEBUCK: These gentlemen will be notified when we meet?

Senator CROLL: I do not think it is necessary for them to be here.

Senator ROEBUCK: They do not know what the minister is going to decide in connection with it.

The CHAIRMAN: We will ask the clerk to notify these gentlemen who have appeared before us this morning of the date of the adjourned meeting.

Mayor SUMMERVILLE: Mr. Chairman, when the amendments that are being proposed here are finally resolved by the minister and are to be brought back before honourable senators, I wonder whether we might have a draft of the proposals. It may not be necessary for us to appear again. Could proper notice be given to our Toronto Harbour Commissioners as well? Through some error in the secretarial services here—and I am sure it was just an honest mistake—somebody overlooked sending to The Toronto Harbour Commissioners notice of Bill S-38. Could you see that they are informed too, Mr. Chairman?

The CHAIRMAN: I have instructed the clerk to inform all harbour commissioners.

Mayor SUMMERVILLE: We were not, but I am sure it was an oversight.

Senator CROLL: Mr. Mayor, you have enough informants on this committee to keep you well informed.

Mayor SUMMERVILLE: I did. The chairman of the harbour commission has requested me to relay that message to the chairman of the committee. Thank you very much, Mr. Chairman.

The CHAIRMAN: Thank you honourable senators.

The committee thereupon adjourned.

APPENDIX "A"

(COPY)

THE BOARD OF TRADE OF METROPOLITAN TORONTO

October 24, 1963

The Honourable Senator A. K. Hugessen, Q.C.,
 Chairman,
 and Members of the Senate Standing Committee
 on Transport and Communications,
 Parliament Buildings,
 Ottawa 1.

Gentlemen:

SENATE BILL S-38

An Act to Provide for the
 Establishment of Harbour Commissions

The Board of Trade of Metropolitan Toronto has examined Senate Bill S-38
 —An Act to Provide for the Establishment of Harbour Commissions.

There is a substantial community of interest between the City of Toronto and the Toronto Harbour Commission in a large area of property on, and adjacent to, the waterfront and the planning and development of that property. That community of interest is much greater than in any other harbour in Canada of which the Board of Trade of Metropolitan Toronto is aware.

At the time the Toronto Harbour Commission was established in 1911, the City of Toronto granted to the Commission a substantial acreage of land. Since then there has been a vigorous programme of dredging to reclaim land from the harbour. The reclaimed land is only at the shoreline temporarily and within a few years is so far from the waterfront that it no longer has a direct connection with harbour installations and operations. Further, the City of Toronto guarantees bonds issued by the Toronto Harbour Commission and invested heavily in the Commission through making good substantial sums of money to prevent default to the holders of harbour commission bonds during the Depression.

The Board of Trade of Metropolitan Toronto is strongly of the view that no such provision as that contained in s. 30 of Senate Bill S-38 should be enacted, under which a simple majority vote of the members of the Toronto Harbour Commission, for the time being, can result in the ownership of this extremely valuable property and the planning for its development and use being shifted from local control to the federal authority.

At the very least, if any such provision is to be made law, it should be expanded to provide for the equitable disposition of the property and its planning and development in statutory terms in the event of the Toronto Harbour Commission coming under legislation such as Senate Bill S-38. These matters should not be left to the discretion of the federal authority after that authority is in a legal position to dispose of them as it sees fit without necessarily having to heed the wishes of Toronto interests.

It is noted also in s. 5 of the Bill that in the case of harbour Commissions that come under the Bill, a majority of the members of the Commission are to be appointed by the Governor in Council, and the remainder are to be appointed by such of the following bodies as the Governor in Council may designate:

- (a) The Council or Councils of one or more municipalities adjoining the harbour,
- (b) Any organization or group of organizations representative of local interests in the vicinity of the harbour, or
- (c) The Lieutenant-Governor in Council of the Province in which the Commission is established.

The business interests in the locality of a harbour have a direct and very great interest in the operation of the harbour. In the view of the Board of Trade of Metropolitan Toronto, the basis of appointment of the remainder of the Commissioners should be such that in all cases a representative of local business interests, in the terms of sub-paragraph (b), should always be appointed to the Commission.

Accordingly, the Board of Trade of Metropolitan Toronto recommends, at least as to Toronto, that there continue to be in Senate Bill S-38 a provision, such as is contained in s. 7 of the Toronto Harbour Commissioners Act, 1911, being Chapter 26 of the Statutes of Canada for that year, that one of the Commissioners shall be appointed by the Governor in Council upon the recommendation of the Board of Trade of Metropolitan Toronto.

The Board hopes that these proposals will receive your favourable consideration.

Respectfully submitted,

Sgd. (G. E. Phipps)
President

Sgd. (J. W. Wakelin)
General Manager



First Session—Twenty-sixth Parliament
1963

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the
Bill S-38, An Act to provide for the Establishment of
Harbour Commissions.

The Honourable JOHN J. CONNOLLY, *Acting Chairman*

No. 2

THURSDAY, DECEMBER 5, 1963.

WITNESSES:

Mr. G. W. Stead, Assistant Deputy Minister, Department of Transport;
Mr. Jacques Fortier, Q.C., Counsel for the Department of Transport.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

THE STANDING COMMITTEE
on
TRANSPORT AND
COMMUNICATIONS

The Honourable
ADRIAN K. HUGESSEN,
Chairman

The Honourable Senators

Baird,	Fournier	Méthot,
Beaubien (<i>Provencher</i>),	(<i>Madawaska-Restigouche</i>),	Molson,
Bishop,	Gershaw,	Monette,
Bouffard,	Gouin,	Paterson,
Bradley,	Haig,	Pearson,
*Brooks,	Hayden,	Power,
Buchanan,	Hollett,	Quart,
Campbell,	Horner,	Reid,
Connolly, (<i>Halifax North</i>)	Hugessen,	Robertson (<i>Shelburne</i>),
(<i>Halifax-Nord</i>),	Isnor,	Roebuck,
Connolly (<i>Ottawa West</i>)	Jodoin,	Smith (<i>Kamloops</i>),
(<i>Ottawa-Ouest</i>),	Kinley,	Smith (<i>Queens-Shelburne</i>),
Croll,	Lambert,	Stambaugh,
Dessureault,	Lefrançois,	Taylor (<i>Westmorland</i>),
Dupuis,	*Macdonald (<i>Brantford</i>),	Thorvaldson,
Farris,	McCutcheon,	Veniot,
	McGrand,	Vien,
	McKeen,	Welch,
	McLean,	Woodrow—(49).

49 members (Quorum 9)

*Ex officio member

LE COMITÉ PERMANENT
des
TRANSPORTS ET
COMMUNICATIONS

L'honorable
ADRIAN K. HUGESSEN,
président

Les honorables sénateurs

Méhot,
Molson,
Monette,
Paterson,
Pearson,
Power,
Quart,
Reid,
Robertson (*Shelburne*),
Roebuck,
Smith (*Kamloops*),
Smith (*Queens-*
(Shelburne)),
Stambaugh,
Taylor (*Westmorland*),
, Thorvaldson,
Veniot,
Vien,
Welch,
Woodrow—(49).

49 membres (Quorum 9)

*Membre d'office

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 23rd, 1963.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator, Lambert, seconded by the Honourable Senator Croll, for second reading of the Bill S-38, intituled: "An Act to provide for the Establishment of Harbour Commissions".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lambert moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, December 5, 1963.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.30 a.m.

Present: The Honourable Senators, Baird, Buchanan, Connolly (*Halifax North*), Connolly (*Ottawa West*), Dessureault, Fournier (*Madawaska-Restigouche*), Gouin, Hollett, Isnor, Kinley, Lambert, McCutcheon, Power, Taylor (*Westmorland*), Thorvaldson and Woodrow. 15.

In the absence of the Chairman and on Motion of the Honourable Kinley, the Honourable Connolly (*Ottawa West*) was elected acting chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel. The Official Reporters of the Senate.

Bill S-38, An Act to provide for the Establishment of Harbour Commissions was further considered.

Mr. G. W. Stead, Assistant Deputy Minister of Transport and Mr. Jacques Fortier were heard in explanation of several proposed amendments. After discussion it was RESOLVED to report the said Bill with the following amendments:

1. *Page 1:* Strike out subclause (1) of clause 3 and substitute the following:
“(1) The Governor in Council may by proclamation establish a harbour Commission for any harbour in Canada which is not named in the *National Harbours Board Act*, or for any harbour for which a harbour Commission has not otherwise been established by Parliament.”

2. *Page 2:* Strike out clause 5 and substitute the following:

“5. (1) A majority of the members of a Commission shall be appointed by the Governor in Council and the remainder shall, subject to subsection (2) and (3), be appointed

- (a) where one municipality only adjoins the harbour for which the Commission is established, by the Council of that municipality; or
- (b) where only two municipalities adjoin the harbour for which the Commission is established and the remainder consists of two members, one member by the Council of each municipality; or
- (c) where the number of municipalities adjoining the harbour for which the Commission is established exceeds the number of members in the remainder, by agreement among the Councils of all the adjoining municipalities.

(2) Where there is no municipality adjoining the harbour for which the Commission is established, or where the Governor in Council determines that a municipality adjoining the harbour for which the Commission is established does not provide normal municipal services, the remainder of the members of the Commission shall be appointed by such of the following bodies as the Governor in Council may designate:

- (a) any organization or group of organizations representative of local interests in the vicinity of the harbour for which the Commission is established; or

(b) the Lieutenant Governor in Council of the province in which is located the harbour for which the Commission is established.

(3) Where a member of a Commission to be appointed in the manner prescribed in subsections (1) or (2) is not appointed within sixty days from the day on which the Commission is established under this Act or from the day on which the office becomes vacant, he may be appointed by the Governor in Council.

(4) Each member of a Commission shall hold office during pleasure for a term not exceeding three years and at the expiration of his term of office may be reappointed.

(5) No member of the Council of a municipality adjoining a harbour for which a Commission is established and no member of the legislature of the province in which is located any harbour for which a Commission is established is eligible to be a member of that Commission."

(3) *Page 5:* Immediately after subclause (1) of clause 13, add the following as subclause (2):—

"(2) Every by-law shall, at least ten days before its submission to the Governor in Council for approval, be served upon the clerk of each municipality adjoining the harbour for which the Commission is established."

4. *Page 6:* Strike out paragraph (b) of subclause (2) of clause 15 and substitute the following:

"(b) the appropriation to the funded reserves of the Commission of such amounts as may be approved by the Minister,"

5. *Page 8:* Strike out subclause (1) of clause 30 and substitute the following:

"(1) Subject to subsection (2), the Governor in Council may by proclamation declare a Commission set out in the Schedule hereto to be established pursuant to this Act as of the day fixed in the proclamation, define the limits of the harbour for which that Commission is so declared to be established, and declare the Act set out in the Schedule establishing that Commission to be repealed as of that day."

6. *Page 8:* Immediately after subclause (1) of clause 30, add the following as subclause (2):

"(2) No proclamation shall be issued pursuant to subsection (1) unless the Governor in Council has received a by-law passed by the Commission requesting the Governor in Council to declare the Commission to be established pursuant to this Act."

7. *Page 10:* Strike out from the Schedule:

"The Toronto Harbour Commissioners' Act, 1911, chapter 26 of the Statutes of Canada, 1911."

At 12.15 p.m. The committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, December 5, 1963

The Standing Committee on Transport and Communications to whom was referred the Bill S-38, intituled: "An Act to provide for the Establishment of Harbour Commissions", have in obedience to the order of reference of October 23rd, 1963, examined the said Bill and now report the same with the following amendments:—

1. *Page 1:* Strike out subclause (1) of clause 3 and substitute the following:

(1) The Governor in Council may by proclamation establish a harbour Commission for any harbour in Canada which is not named in the National Harbours Board Act, or for any harbour for which a harbour Commission has not otherwise been established by Parliament.

2. *Page 2:* Strike out clause 5 and substitute the following:

5. (1) A majority of the members of a Commission shall be appointed by the Governor in Council and the remainder shall, subject to subsections (2) and (3), be appointed

(a) where one municipality only adjoins the harbour for which the Commission is established, by the Council of that municipality; or

(b) where only two municipalities adjoin the harbour for which the Commission is established and the remainder consists of two members, one member by the Council of each municipality; or

(c) where the number of municipalities adjoining the harbour for which the Commission is established exceeds the number of members in the remainder, by agreement among the Councils of all the adjoining municipalities.

(2) Where there is no municipality adjoining the harbour for which the Commission is established, or where the Governor in Council determines that a municipality adjoining the harbour for which the Commission is established does not provide normal municipal services, the remainder of the members of the Commission shall be appointed by such of the following bodies as the Governor in Council may designate:

(a) any organization or group of organizations representative of local interests in the vicinity of the harbour for which the Commission is established; or

(b) the Lieutenant Governor in Council of the province in which is located the harbour for which the Commission is established.

(3) Where a member of a Commission to be appointed in the manner prescribed in subsections (1) or (2) is not appointed within sixty days from the day on which the Commission is established under this Act or from the day on which the office becomes vacant, he may be appointed by the Governor in Council.

(4) Each member of a Commission shall hold office during pleasure for a term not exceeding three years and at the expiration of his term of office may be reappointed.

STANDING COMMITTEE

(5) No member of the Council of a municipality adjoining a harbour for which a Commission is established and no member of the legislature of the province in which is located any harbour for which a Commission is established is eligible to be a member of that Commission.

3. *Page 5:* Immediately after subclause (1) of clause 13, add the following as subclause (2):—

(2) Every by-law shall, at least ten days before its submission to the Governor in Council for approval, be served upon the clerk of each municipality adjoining the harbour for which the Commission is established.

4. *Page 6:* Strike out paragraph (b) of subclause (2) of clause 15 and substitute the following:

(b) the appropriation to the funded reserves of the Commission of such amounts as may be approved by the Minister.

5. *Page 8:* Strike out subclause (1) of clause 30 and substitute the following:

(1) Subject to subsection (2), the Governor in Council may by proclamation declare a Commission set out in the Schedule hereto to be established pursuant to this Act as of the day fixed in the proclamation, define the limits of the harbour for which that Commission is so declared to be established, and declare the Act set out in the Schedule establishing that Commission to be repealed as of that day."

Page 8: Immediately after subclause (1) of clause 30, add the following as subclause (2):

(2) No proclamation shall be issued pursuant to subsection (1) unless the Governor in Council has received a by-law passed by the Commission requesting the Governor in Council to declare the Commission to be established pursuant to this Act."

Page 10: Strike out from the Schedule: "The Toronto Harbour Commissioners' Act, 1911, chapter 26 of the Statutes of Canada, 1911."

All which is respectfully submitted.

JOHN J. CONNOLLY,
Acting Chairman.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

OTTAWA, Thursday, December 5, 1963.

The Standing Committee on Transport and Communications to which was referred Bill S-38, an Act to provide for the Establishment of Harbour Commissions, met this day at 10.30 a.m. to give further consideration to the bill.

The CLERK: In the absence of the Chairman, is it your pleasure to elect an Acting Chairman?

Senator KINLEY: I move that Senator Connolly (*Ottawa West*) be Acting Chairman.

Some Hon. SENATORS: Agreed.

Senator JOHN J. CONNOLLY (*Acting Chairman*), in the Chair.

The ACTING CHAIRMAN: Thank you, gentlemen. Honourable senators, we have before us this morning Bill S-38, an Act to provide for the Establishment of Harbour Commissions. Now this is not a new matter before this committee. No doubt you have all seen the record of the committee even if you have not attended the proceedings of this committee which were held on October 30, 1963 when the bill was originally discussed.

If I may say so, before we engage upon our work this morning, the Chairman at that time, and indeed of the permanent committee, is Senator Hugessen who, as you all know, has had some kind of illness overtake him, and perhaps it might be appropriate if I, as Acting Chairman, and on your behalf were to write a note to Mrs. Hugessen to convey on your behalf the best wishes of all members of the committee for his early recovery.

Hon. SENATORS: Hear, hear.

The ACTING CHAIRMAN: Unfortunately I was not here at the last meeting of the committee, but I have read the proceedings which have been recorded, and you will notice that the proceedings of this meeting are also being recorded. At the last meeting were heard witnesses principally from the cities of Toronto, Hamilton and Oshawa, as well as officials from the Department of Transport, including Mr. G. W. Stead, the assistant deputy minister. We have a number of officials whom I have not yet met here this morning.

Perhaps it might be appropriate for me at this moment to say that as a result of our discussions which took place here on October 30 the department has drafted some changes, or some proposed amendments to the bill. You have copies of those amendments before you in mimeograph form. I understand some of the amendments were completed yesterday. Frankly, I personally have not had an opportunity to study them carefully. I am sure you are all in the same position so perhaps we would be able to do this together this morning. However, I do observe in reading page 45 of the transcript of the last hearing that towards the end of the meeting Senator Roebuck, referring to the witnesses who were good enough to come at that time, asked "These gentlemen will be notified when we meet?" and the Chairman replied a little further

STANDING COMMITTEE

down, "We will ask the Clerk to notify these gentlemen who have appeared before us this morning of the date of the adjourned meeting". A little later the Chairman said "I have instructed the Clerk to inform all harbour commissioners" and he was talking about the next meeting.

The situation we are in this morning is that we have the amendments and we have the officials of the department here. I am not able to report on what notice has been sent out, but the amendments as you will see are rather long and perhaps a little complicated. I thought, if you approve the procedure that I am about to suggest, we might follow along these lines: perhaps we could hear Mr. Stead first, as to what he has been able to do about the dispatch of notices. Then we might hear from him on the amendments. I don't suggest that we pass the amendments as it is desirable to have people appear here who want to make representations. But we are in some difficulty because the session is drawing to a close, and I know we want to act with dispatch. I think myself it is a good deal better for all concerned if the witnesses appear before a committee of our house rather than a committee of the other house. I think we can deal with them more effectively, and more satisfactorily to them, to the department and to ourselves here. So that is what I have to say to you, gentlemen. It is your pleasure to hear Mr. Stead?

Hon. SENATORS: Agreed.

Mr. G. W. Stead, Assistant Deputy Minister, Marine, Department of Transport:
Thank you, Mr. Chairman.

Honourable senators, you have before you the amendments, and when the time comes I will be glad to synopsise their effect. As the Chairman has indicated they were only approved yesterday, and this created certain problems. I must say it was not the understanding of the department that we would notify everybody, and the instructions I received yesterday from my minister were to inform the three representatives of the three cities already mentioned.

Senator CONNOLLY (*Halifax North*): Who are they?

Mr. STEAD: Toronto, Hamilton and Oshawa. In the case of Toronto you will see at the very end of the amendments that they have been eliminated because of the complications involved when they do a lot of land management on behalf of the committee. It was deemed this would not be a precedent in respect to others because it would result in going through a lot of complications.

Senator CONNOLLY: (*Halifax North*): The exception was made on that occasion with the approval of the minister?

Mr. STEAD: I have so notified Mr. Griffith, who was here at your previous meeting, and have had him notify the acting mayor.

The Acting CHAIRMAN: Perhaps you might deal with the Toronto matter now. If this is the question it seems to me upon reading the transcript of the last meeting that all Mayor Summerville said, and the others here who were speaking in his interests and indeed the members of the committee, was that what they wanted was the elimination of Toronto from the schedule.

Senator CONNOLLY (*Halifax North*): What does that mean, Mr. Chairman? Does it mean Toronto may not be included?

The Acting CHAIRMAN: I assume the interpretation that will be placed on the act in regard to Toronto is that the act will not apply to Toronto.

Senator CONNOLLY (*Halifax North*): But the Governor in Council still has power?

Mr. STEAD: No.

Senator CONNOLLY (*Halifax North*): Will the witness answer this question; is Toronto in competition with the port of Montreal?

Mr. STEAD: I suppose to some degree and in some kind of traffic.

Senator McCUTCHEON: Montreal does not come under this bill.

Senator CONNOLLY (*Halifax North*): Is it permitted under legislation that the port of Montreal compete with the port of Toronto?

Mr. STEAD: I don't know if any legislation is required to permit it.

Senator CONNOLLY (*Halifax North*): Perhaps I should clarify my question. Is the port of Toronto permitted to go out into the open market and compete directly with the port of Montreal without restriction of any kind?

Mr. STEAD: If you are asking if they go out after business in a salesmanship sense then the answer is yes. They all do this.

Senator ISNOR: Mr. Chairman, I question Mr. Stead's answer to Senator Connolly. I think there is a difference between going out after business and competing—that is, in the case of Montreal going out and competing against Toronto in what we would term a free enterprise manner. Montreal comes under the National Harbours Board, and I do not think it is permitted to work independently. It cannot offer any special inducements, or anything of that kind.

Mr. STEAD: I cannot speak for the National Harbours Board, but subject to that my understanding is that they encourage the use of their ports generally, whereas Commission ports compete individually. Does that answer the question?

Senator CONNOLLY (*Halifax North*): Yes, that is right. There is no misconception in my mind as between a National Harbours port like Montreal as against a port like Toronto which is not under the National Harbours Board.

Senator GOBIN: In Montreal we had the old Harbour Commission which was abolished a long time ago. Montreal is now under the National Harbours Board.

Mr. STEAD: We have checked the National Harbours Board Act, and it names harbours that shall be included, but there is no clause in that act whereby harbours may be taken out of the jurisdiction of the National Harbours Board and, therefore, it can be done only by Act of Parliament.

Senator BAIRD: In other words, once they are in, they are in.

Mr. STEAD: Unless Parliament says they are not. There is no executive power to take them out.

Senator LAMBERT: The amendment to clause 3 makes this quite clear.

The Acting CHAIRMAN: This is apart from the bill, senator. What Mr. Stead is now discussing is quite apart from the bill before us. He is now discussing a matter that arises under the National Harbours Board Act.

Is it your wish to have Mr. Stead continue?

Hon. SENATORS: Agreed.

Senator ISNOR: Is he going to tell us the difference between Hamilton and Toronto with respect to this particular bill?

The ACTING CHAIRMAN: Yes, I think he is coming to Hamilton now.

Mr. STEAD: Yes, I was about to speak about Hamilton. I had a chance to explain to Mayor Copps, who appeared before this committee earlier, about the implications of this bill which is in some respects similar to the act they now have. However, they were concerned, as were several other cities, some of whom appeared and some of whom sent in only a written or telegraphic communication, about the possibility which we in the department envisage as a practical possibility of excluding the adjoining city from representation. The amendment before you does what it was agreed we would do, and makes it

certain that the city, if there is one in the area, is represented. Only if there is no municipality, with one qualification, or no municipality worthy of the name do the other clauses which provide for alternative local representation come into play. So that there is no chance under this bill of a proper city in the environs of the harbour being eliminated from representation.

The other point that concerned Hamilton had to do with notification, and this also concerns Oshawa, and one or two others.

The ACTING CHAIRMAN: Notification of this meeting?

Mr. STEAD: No, sir, I am talking about the substance of the bill—notification of the bringing into force of this bill in respect of their harbour rather than the act under which they are now operating. That has been taken care of in these amendments.

I telephoned Mayor Copps this morning, and had a discussion with him. He was not able to act officially, but he expressed himself as being satisfied with the contents of this amendment as meeting his problems.

I have also been in contact with the city solicitor of Oshawa, Mr. McNeely, who was present at your previous meeting, and told him the same things. If you wish I will explain that we have met his objections substantially, as he agrees. We have not met them entirely, but he agrees—and this is an immediate reaction—that substantially we have met his points.

Naturally, in the time available we have not been able to get written confirmation of what I am telling you. I may say that we are under some pressure at times in the department because there are some perfectly legitimate cases awaiting action when it is the pleasure of Parliament to pass this bill, and we would prefer not to see a further delay of several months if it can be avoided.

Senator KINLEY: What do you mean by "representation"? What do you include in that?

Mr. STEAD: On the Commission. You will recall that under clause 5 of the printed bill it says:

- (1) A majority of the members of a Commission shall be appointed by the Governor in Council and the remainder shall be appointed by such of the following bodies as the Governor in Council may designate:
 - (a) the council or councils of one or more municipalities adjoining the harbour for which the Commission is established;
 - (b) any organization or group of organizations representative of local interests in the vicinity of the harbour for which the Commission is established; or
 - (c) the Lieutenant Governor in Council of the province in which is located the harbour for which the Commission is established.

Now, what we have done in the amendment is to delete the reference to "designating" at the beginning. It comes in again in the latter part of it, but in relation to municipalities there is no longer any option. If there is a municipality it provides the remainder of the representation on the membership of the Commission itself. Does that answer your question, senator?

The Acting CHAIRMAN: Honourable senators, I am in your hands about the method of proceeding further. Is it appropriate to suggest that we consider the bill clause by clause? Mr. Stead could give us the proposed amendments for the clauses to be affected, and we can pass clauses that are not controversial and stand others, and if you think further notification in accordance with the undertaking given by Senator Hugessen should be sent out, perhaps we can decide that at the conclusion of our meeting.

Senator KINLEY: Was Toronto the focal point of the problem? Was there much trouble about the others?

The ACTING CHAIRMAN: I think that that will emerge as we study these individual amendments.

Senator KINLEY: I did not gather from the previous hearings that there was much trouble from the others.

The Acting CHAIRMAN: Perhaps you are quite right senator. What is the desire of the committee? Shall we take the bill clause by clause?

Hon. SENATORS: Agreed.

The Acting CHAIRMAN: Before we deal with clause 1, Mr. Stead has a point which he wishes to make.

Mr. STEAD: Gentlemen, I would like to point out that this bill is very similar in substance, with certain exceptions which we will come to, to bills that you have passed before. The last time I appeared before this committee was some two years ago when you were considering bills to establish harbour commissions in Oshawa and Nanaimo, and to amend the harbour limits in respect of Windsor.

I thought it would be useful to point out that you have already passed the substance of this bill on a previous occasion, and that this is the pattern which has been followed since the last war. The earlier acts passed during the first war are different. What I have done to prepare myself for this meeting is to run through the Oshawa Act, which you have passed, and make clause by clause comparisons, so that you can see what is new.

Senator GROSART: Before you proceed, Mr. Chairman, may I ask a question? I am not a member of the committee, but I have volunteered to attend in the interests of the City of Oshawa. I understand you to say, Mr. Stead, that you were in touch with Mr. McNeely this morning?

Mr. STEAD: Yes, Sir.

Senator GROSART: And he is satisfied with the proposed amendments?

Mr. STEAD: He is substantially satisfied, as I was able to describe them to him over the telephone.

Senator GROSART: May I ask you this question: Did he ask you to meet their request 100 per cent, or was he satisfied?

Mr. STEAD: He expressed himself as being satisfied.

Senator GROSART: That is fine, thank you.

Mr. STEAD: Their main point was fear of inclusion, and we have met that in full.

Senator GROSART: Yes, I am aware that they are not taking the same position as is Toronto. They are not asking for the exclusion that Toronto is asking.

The ACTING CHAIRMAN: Very few people do.

Honourable senators, I should tell you that with Mr. Stead this morning we have from the Department of Transport Mr. Jacques Fortier, Q.C., counsel for the department, and also Mr. J. W. Cavey and Mr. Walter J. Manning, Director of Marine Works Branch. These gentlemen are available for consultation.

Now, section 2: Interpretation. This is the definitions section of "Commission, harbour, member, minister, vessel". Are there any comments or changes to be made in this section, first of all?

Mr. STEAD: Not that I am aware of, sir.

The ACTING CHAIRMAN: Has the committee any views to express on that section?

Mr. Jacques Fortier, Counsel, Department of Transport: Mr. Chairman, this section is substantially the same as in the existing act.

The ACTING CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 3: Establishment of Harbour Commissions. Establishment of Commissions. Commissions to be bodies corporate. Are there any changes suggested?

Mr. STEAD: In section 3 we have the typewritten amendment.

The ACTING CHAIRMAN: There is an amendment to section 3. The amendment is to be found in the mimeographed sheet:

1. Page 1, lines 18 to 20, strike out subparagraph (1) to clause 3 and substitute the following:

- (1) The Governor in Council may by proclamation establish a harbour Commission for any harbour in Canada which is not named in the National Harbours Board Act, or for any harbour for which a harbour Commission has not otherwise been established by Parliament.

Harking back to the minutes of the last meeting of the committee, it seems to me that this in part, at least, was done at the suggestion of Senator Hayden, who thought the National Harbours Board Act commission should be excluded.

Senator McCUTCHEON: That is correct.

Mr. STEAD: If I might point out the relationship of this Toronto problem?

The ACTING CHAIRMAN: Yes.

Mr. STEAD: A further amendment you will come to later on, section 30, the transitional clause—the reference to the procedure for bringing an existing commission under the act, for transferring the form of the commission though not its substance—refers to the schedule from which it is proposed to eliminate Toronto. This, taken with the amendment to section 30, gives the protection Mayor Summerville requested.

Senator ISNOR: I wonder if Mr. Stead would consider commenting in regard to the striking out of the words after: "the Governor in Council may by proclamation establish a harbour Commission for any harbour in Canada"? In other words, if any one of the present harbours named in the National Harbours Board Act wish to carry on under this system, could that be made possible?

Mr. STEAD: You are suggesting the possibility, are you, it may be desirable to have one of the present Harbour Board harbours brought under this system?

Senator ISNOR: No, but they might wish to take advantage of this.

Mr. STEAD: They first have to be eliminated from the National Harbours Board Act by act of Parliament, and then they become "any harbour" and could be brought under this provision if Parliament so wished.

Senator KINLEY: That means you could nationalize any harbour commission?

Mr. STEAD: No, there is no way that I am aware of in which a commission harbour can be brought under the National Harbours Board.

Senator KINLEY: This is in relation to a harbour board and not the National Harbours Board?

Mr. STEAD: "Harbour commission" is perhaps the correct name, to avoid confusion.

Senator HOLLETT: Have you a list of all the harbours under the National Harbours Board Act?

Mr. STEAD: I do not administer them but I think that I can name them from memory. They are: Vancouver; Churchill; the Port Colborne grain eleva-

tor as an individual operation, but not the harbour itself; Montreal; Trois-Rivières; Quebec; Halifax; Saint John, New Brunswick—and I left out Chicoutimi. I am sorry, it is the Prescott grain elevator and not the Port Colborne.

Senator HOLLETT: Is not St. John's, Newfoundland included?

Mr. STEAD: No.

Senator LAMBERT: Is not Port Colborne in it?

Mr. STEAD: I am sorry; both of them.

Senator MOLSON: Any harbour commission not otherwise established—how does that affect Oshawa in this instance? Was Oshawa established by Parliament?

Mr. STEAD: Yes, it is one of the ones listed in the back of the printed bill.

The ACTING CHAIRMAN: If you would look at the schedule to page 10, at the back of the printed bill, it states: "Oshawa Harbour Commissioners Act, chapter 21 of the Statutes of Canada, 1960."

Senator MOLSON: It says in the amendment: ". . . has not otherwise been established by Parliament."

Mr. FORTIER: The harbours which are listed in this schedule may be brought under this act under the provisions of section 30 and not under the provisions of section 3.

Senator LAMBERT: Mr. Chairman, there is one simple point. There are nine harbour boards under the National Harbours Board. Apart from that, the Governor in Council may, as I read this, establish a commission for any harbour in Canada outside of the nine. Is that on application of any local community, or can it be done arbitrarily?

Mr. STEAD: In practice it is not done arbitrarily. This is in conformity with the policy that has been long recognized. The principles involved in establishing a harbour commission, I think, can be synopsized as follows:

- (1) It must be a harbour with some development potential;
- (2) There must be some local enthusiasm and interest in establishing a local commission—and perhaps I should have put that one first;
- (3) There must be sufficient revenue coming in to the Department of Transport, as a public harbour, to support a separate administration when that revenue is transferred to any prospective harbour commission.

I think those are the main items. I have a vague recollection there is a fourth, but it does definitely depend on representations from the locality. We welcome them, because we think it is better when local interest and initiative are brought to bear on local harbour problems. They are welcomed with open arms, but we do not initiate the action.

Senator ISNOR: When you hold the view it requires local enthusiasm, why have you not set up a local advisory board in connection with the National Harbours Board?

Mr. STEAD: I am sorry, but I cannot speak for the National Harbours Board.

The ACTING CHAIRMAN: What is your wish about section 3? Have all the objections been met by this amendment? Shall we pass it or shall we stand it?

Hon. SENATORS: Carried.

The ACTING CHAIRMAN: Section 4: Contents of proclamation establishing Commission. Alteration of harbour limits, etc.

I notice there are no proposed amendments to this section.

Hon. SENATORS: Carried.

The Acting CHAIRMAN: Section 5: Appointment of members of Commission. Tenure of office. Persons ineligible to be members. I understand there is an amendment to this section. Perhaps we could hear from Mr. Stead or Mr. Fortier?

Mr. STEAD: Generally, the amendment proposed is intended to make it quite clear that where there is a city in the immediate neighborhood of the harbour it shall be the body providing the minority representation. It is a little complicated to get all the possibilities into a piece of legislation, but it has been drafted as follows.

The Acting CHAIRMAN: Mr. Stead, I notice it is very long. I wonder if it would suit the convenience of the committee if we took it section by section and looked at it and then decided on what we would do.

Hon. SENATORS: Agreed.

Senator LAMBERT: Does this particular provision apply to Port Arthur and Fort William, for example?

Mr. STEAD: May I come to that under (b)?

Senator LAMBERT: Very well.

The Acting CHAIRMAN: This is in substitution for section 5 as it is now in the printed bill.

Mr. STEAD:

(5) (1) A majority of the members of a Commission shall be appointed by the Governor in Council"—

—that is the same as in the printed bill

—and the remainder shall, subject to subsections (2) and (3) be appointed

(a) where one municipality only adjoins the harbour for which the Commission is established, by the Council of that municipality;

You will note there is no distinction anywhere in this.

. . . or
(b) —

The Acting CHAIRMAN: No comment on that subsection at the moment?

Hon. SENATORS: Agreed.

Senator LAMBERT: There is an important point about representation. This establishes a common pattern right across the board now. In other words, there are some cases where you have three members of the local commission appointed by the locality and two by the federal Government. That is true of Toronto, of course.

Mr. STEAD: Yes, I think Toronto and Winnipeg are the only exceptions to the general pattern.

Senator LAMBERT: What about Hamilton?

Mr. STEAD: Hamilton has three altogether—two federal and one city.

Senator LAMBERT: In most of these cases the majority of the appointees were appointed by the federal authority?

Mr. STEAD: This is the pattern in the case of all but Toronto and Winnipeg.

Senator LAMBERT: It will be common to them all now?

Mr. STEAD: It is in fact now.

Senator KINEY: They do not want to be put under the jurisdiction of the Board. Internal conflict might put them under the jurisdiction of the Board, and they do not want that, and that is what has scared them.

Mr. STEAD: That is possible.

Senator LAMBERT: There is another point in connection with this. You cannot specify everything, of course, but the majority of members appointed by the federal authority would be drawn largely from the locality?

Mr. STEAD: Yes, sir, that has been the firm policy under both administrations, that the federal appointees come from the area served by the harbour.

The Acting CHAIRMAN: Would you continue, Mr. Stead. Perhaps for clarification I should draw the attention of the committee to section 4 which has just been passed, subsection 1 (c), which says that the members of the commission shall be not less than three and not more than five. Now I think if you keep that in mind, as you read the proposed amendments to section 5, the whole thing falls into place fairly well.

Senator LAMBERT: That has always been the base. But the question is the division between local and federal authority. That is what I am interested in.

Mr. STEAD: The pattern here is the same pattern existing now in all cases except Toronto and Winnipeg. We have dealt with the case of one municipality adjoining the harbour, and in (b) we deal with the case where there are two municipalities, and we are now dealing in these subsections with the minority, the remainder. This would satisfy the Lakehead case. It seems to me to be unlikely that it would ever set up a three-member commission with one man representing two municipalities. But we have included this so that it is possible to do so if the Governor wishes to at any time. We are trying to make a permanent bill of this.

Senator MCCUTCHEON: Is that likely to be the case?

Mr. STEAD: It is possible, but politically it is unlikely. Subsection (c) covers cases where there are more than two municipalities adjoining the harbour and this will apply to the New Westminster situation. In this case where there are five commissioners, the total majority of which would be federal, and you are dealing now with two members representing the consortium of the municipalities, the remaining municipalities. The clause therefore reads:

(c) where the number of municipalities adjoining the harbour for which the commission is established exceeds the numbers of members in the remainder, by agreement among the councils of all the adjoining municipalities.

Senator GOBIN: If they don't agree?

Mr. STEAD: That is covered in section 3 below.

Senator KINLEY: Let me ask if Government appointed members will come from the area affected?

Mr. STEAD: As a matter of policy very definitely from the area.

Senator KINLEY: But it is not statutory.

Mr. STEAD: No, and the reason is that sometimes you have people with established businesses in the area who have their homes outside the area and there you could run into fine legal entanglements.

Senator KINLEY: They will not be appointed from Ottawa, for instance?

Mr. STEAD: Ottawa or Oshawa? I think there would be difficulties about that.

Senator LAMBERT: Have you got the Fraser River tangle fixed up yet?

Mr. STEAD: This clause 3 is designed for the express purpose of meeting the New Westminster case. The point there is that the original commission set up before the First War was named for New Westminster only. There has been development up and down the river, and the other municipalities have accepted the idea of getting together and collectively naming two members.

Senator LAMBERT: My friend Senator Reid is not here and I felt it incumbent upon me to say a word on that.

Mr. STEAD: Thank you, and this has been applied in conformity with seeing what we can do about their wishes.

The Acting CHAIRMAN: Subsection 2.

Mr. STEAD: It reads as follows:

Where there is no municipality adjoining the harbour for which the commission is established—

This may be unlikely, but we thought we should provide for it—

—or where the Governor in Council determines that a municipality adjoining the harbour for which the commission is established does not provide normal municipal services—

Parenthetically what we have in mind are things of interest to a harbour commission, such as police, fire protection, control of road ends and sewage. We may find we want to establish a committee where there is just a little village—

—the remainder of the members of the commission shall be appointed by such of the following bodies as the Governor in Council may designate:

This is the only part of section 5 where the Governor in Council has power to designate who does the appointing. I hope this meets with the point made by the gentleman from Oshawa.

- (a) any organization or group of organizations representative of local interests in the vicinity of the harbour for which the commission is established; or
- (b) the Lieutenant Governor in Council of the province in which is located the harbour for which the commission is established.

These are the same clauses as in the printed bill.

Senator GOUIN: This would, for example, include a chamber of commerce.

Mr. STEAD: Yes.

The Acting CHAIRMAN: And this is the provincial Governor in Council.

Senator GOUIN: I personally have no objection to that. There is at the present time co-operation between the provincial and federal authorities. I have no objection to it, but it is rather eccentric.

Mr. STEAD: Yes, I agree it is, but it is governed by what comes before, and if there is a proper committee there we must use it. This only comes into play where there is no city.

Senator GOUIN: For example, if you established a port on an island where there is nobody at all and where it is important that you should have a harbour commission.

The Acting CHAIRMAN: Any other comments on subsection 2?

Some Hon. SENATORS: Agreed.

The Acting CHAIRMAN: Subsection 3.

Mr. STEAD: Subsection 3 reads, and this meets the point made by the honourable senator as to what happens if they don't agree—

(3) Where a member of a Commission to be appointed in the manner prescribed in subsections (1) or (2) is not appointed within sixty days from the day on which the commission is established under this Act or from the day on which the office becomes vacant, he may be appointed by the Governor in Council.

We assume that this power will never have to be used. The fact that it is there will have a persuading effect upon a council in cases where there are more than one council in the area.

Senator MCCUTCHEON: That is one of those deterrents that we were talking about the other day.

Senator HOLLETT: In that third line should not the word be "recommended" rather than "appointed"?

Mr. STEAD: No, the prior clauses say a municipality or a board of trade appoints. The purpose of this is that we don't want these commissions to be mere creations of the federal Government. We want to have local interest and enthusiasm in the appointment of representatives to these commissions, and this is considered by the department to be important.

Senator HOLLETT: Supposing the body designated to select the member fails to do so?

Mr. STEAD: In that case the Governor in Council may make the appointment.

Senator HOLLETT: It does not say so there. It says:

Where a member of a commission to be appointed in the manner prescribed in subsections (1) or (2) is not appointed—

He has to be designated by somebody before he is appointed.

The Acting CHAIRMAN: I wonder if I could help on this. I refer to section 5, subsection 1, which says:

A majority of the members of a commission shall be appointed by the Governor in Council and the remainder shall be appointed by such of the following bodies as the Governor in Council may designate—

And then subsection (b) goes on to give the method of appointment. That deals with the point you have in mind. These other bodies designated in subsections (a) and (b) have the power to appoint.

Senator GOUIN: This is the only way out of the difficulty. It is the same problem as you have in labour disputes.

The Acting CHAIRMAN: It is a mild form of closure. Subsection 3?

Hon. SENATORS: Agreed.

The Acting CHAIRMAN: Subsection 4?

Mr. STEAD:

Each member of a Commission shall hold office during pleasure for a term not exceeding three years and at the expiration of this term of office may be reappointed.

This is standard.

Hon. SENATORS: Agreed.

Mr. STEAD: Subsection 5 reads:

No member of the Council of a municipality adjoining a harbour for which a Commission is established and no member of the legislature . . .

This is put in to cover the possibility of appointment by the province

. . . of the province in which is located any harbour for which a Commission is established is eligible to be a member of that Commission.

Apart from the addition of the phrase relating to the province this is a standard clause in all cases but one that exist.

Senator BOUFFARD: What about if he was elected as a member after he was appointed?

Mr. STEAD: My understanding is that if he is elected to the legislature after he has been appointed to the commission, this will vacate this office.

Senator BOUFFARD: It does not say that anywhere.

Senator THORVALDSON: This provides for his eligibility.

The Acting CHAIRMAN: Is that satisfactory?

Senator BOUFFARD: I do not mind, but it seems to me that the fact he is elected afterwards should also be covered in the bill.

The Acting CHAIRMAN: Senator Thorvaldson points out that the wording here probably looks after the point you have raised. If you read subsection 5 you will notice that at the beginning its says, "No member of the Council of a municipality . . ." and so on ". . . is eligible to be a member of that Commission". So, the fact that he is a member of the commission and is subsequently elected to council means that he is no longer eligible to be a member of the commission. Does that meet your point, Senator?

Senator BOUFFARD: That is all right with me.

Senator GOUIN: But there is no restriction on a senator being appointed?

The Acting CHAIRMAN: We are all very much above suspicion, of course, senator.

Mr. STEAD: No, not under this act.

The ACTING CHAIRMAN: Subsection 5?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Honourable senators, that appears to cover the whole of clause 5 as it is proposed it should appear in the amended bill. In view of your earlier discussion do you desire to carry clause 5 as it now stands?

Senator CONNOLLY (*Halifax North*): There is one point there, Mr. Chairman, and that is the provision of at least ten days' notice. Is that adequate notice to give a municipal council which meets infrequently?

Mr. STEAD: This has been the pattern in the past, and we have had no difficulties or complaints about it.

Senator CONNOLLY (*Halifax North*): Many rural municipal councils do not meet as frequently as do urban councils.

Mr. STEAD: Perhaps I could add something else. The minister has said on several occasions in connection with this kind of legislation that the working of it depends on the reasonably warm co-operation between the federal Government and the municipality, and the practical fact of the matter is that one party cannot ride roughshod over the interests of the other. In practice I think this would all be agreed on, as it was in the case of New Westminster, in advance. It is merely a protection in the case that some bureaucrat, a little less democratic than I am, wanted to do something without notifying the city.

Senator CONNOLLY (*Halifax North*): You would not think there would be any benefit in giving 30 days' notice, for example?

Mr. STEAD: Senator, this applies to all by-laws, and my experience would suggest that that would create difficult delays at times, particularly with respect to by-laws which have to be in effect before the opening of navigation on the lakes, and that sort of thing. I would prefer to see it stay at this time.

Senator GOUIN: Where do you find that period?

Mr. FORTIER: It is in clause 13. We have not reached it yet.

The ACTING CHAIRMAN: Clause 6: oath of office, and Who may administer oaths.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 7: chairman, quorum, remuneration of members, appointment of officers and employees of commission, salary of chief executive officer.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 9, "jurisdiction within harbour".

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 10: powers of commission to purchase, construct, sell, etc., real and personal property.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 11: administration of Crown and municipal property; leasing of land administered for Crown. There are no proposed amendments here?

Mr. STEAD: No, sir.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 12: construction of rail facilities; Commission not railway company.

Hon. SENATORS: Agreed.

Mr. FORTIER: This clause, Mr. Chairman, is the same as in the other legislation.

Senator THORVALDSON: There is no change.

The ACTING CHAIRMAN: Clause 13: by-laws. Are there amendments here?

Mr. STEAD: Yes, sir, there is one. Page 3 of the mimeographed material adds a clause at the end reading:

Every by-law shall, at least ten days before its submission to the Governor in Council for approval, be served upon the clerk of each municipality adjoining the harbour for which the Commission is established.

Senator McCUTCHEON: That would meet the objection of some of the witnesses who were here the last time?

Mr. STEAD: Yes, sir.

Senator TAYLOR (Westmorland): And what appears before that becomes subclause (1)?

Mr. STEAD: That is right, sir. There is a consequential renumbering of paragraphs.

The ACTING CHAIRMAN: Agreed?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 14: commission may borrow and issue debentures therefor. Are there any amendments with respect to this?

Mr. STEAD: No, sir.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Finances: clause 15, charges against revenues, and amounts payable to Receiver General.

Mr. STEAD: There is one small amendment to that which is contained in the mimeographed material at the bottom of page 3 to cover a technical point. It refers to clause 15(1)(b) which reads:

the appropriation to the funded reserves of the Commission of such amounts as may be approved by the Minister.

The word "funded" is inserted before the word "reserves" in the printed material. The accountants tell us that the legal interpretation of "reserves" alone

refers to reserves on the liability side of the balance sheet, and by the addition of the word "funded" the harbour commission is permitted to retain cash reserves, which is the intention.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 16: powers to invest. Is there any amendment?

Mr. STEAD: No, sir.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 17: accounts; inspection of accounts.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 18: moneys obtained from use of Crown property to form part of Commission's revenues.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Expropriation: clause 19.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Payment of rates: clause 20, payment of rates imposed on cargoes of vessels. There is no change?

Mr. STEAD: No.

Senator MOLSON: That is standard?

Mr. STEAD: Yes, sir, it is standard. It is the same as clause 18(2) of the Oshawa Harbour Commissioners Act, for example.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 21: seizure of vessels or goods.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 22: detention of vessels or goods.

Senator THORVALDSON: Is there frequent use of these powers?

Mr. STEAD: Not that I am aware of, sir, no.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 23: sale of detained goods?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Evidence: clause 24, evidence of by-laws, evidence of harbour limits.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: General: clause 25, pecuniary dealing with members prohibited.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Clause 26: limitation of actions.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: That is a one-year limit.

Section 27: winding up of a Commission.

Hon. SENATORS: Agreed.

Senator GOUIN: Is there an amendment?

Mr. STEAD: No, not yet.

The ACTING CHAIRMAN: Section 28: Governor in Council may authorize development, etc., of Crown lands.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Section 29: works of Commission subject to Navigable Waters Protection Act.

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Transitional. Section 30: procedure for bringing existing Commission under Act. There is an amendment here. I think, Mr. Stead, since you are amending the whole of subsections 1 and 2 we might take them separately.

Mr. STEAD: Thank you, sir. If you would like me to read the whole thing as it stands now?

The ACTING CHAIRMAN: The proposed change, please.

Mr. STEAD: The proposed amendment, as per your mimeographed sheet, reads:

(1) Subject to subsection (2),—

—and those are the only new words in that clause as compared with the printed bill—

—the Governor in Council may by proclamation declare a Commission set out in the Schedule hereto to be established pursuant to this Act as of the day fixed in the proclamation, define the limits of the harbour for which that Commission is so declared to be established, and declare the Act set out in the Schedule establishing that Commission to be repealed as of that day.

(2) No proclamation shall be issued pursuant to subsection (1) unless the Governor in Council has received a by-law passed by the Commission requesting the Governor in Council to declare the Commission to be established pursuant to this Act.

If I may explain, this provides the notice that I referred to earlier. The subsequent clause in section 30 deems the new commission to be the same as the old commission, so you are not establishing one by this clause, but are merely bringing existing ones, in some cases, under a slightly different form of legislation.

Senator McCUTCHEON: This was to meet the objection that two members of the commission might get together and sign a piece of paper giving consent. It said, "The Governor in Council may, with the consent of a majority of the members of a commission". That consent could be given by two of them meeting in a street car.

Mr. STEAD: I agree this was possible, but I do not think we could legislate against everything. The fact of the matter, again, is these acts are usually handled by some measure of agreement. The reason "a majority" was written in was we did not want an obstructionist to hold up action everyone else thought was reasonable.

Senator McCUTCHEON: The original section said the Governor in Council might do this with the consent of a majority of the members, and that consent could be given, I suggest, very informally. Now the consent is by means of a by-law. It is now a formal act.

Mr. STEAD: It is a formal act now.

The ACTING CHAIRMAN: I think that meets an objection that was raised, as you pointed out earlier.

Mr. STEAD: I am sorry, I did misunderstand you, Senator McCutcheon.

Senator GROSART: I am not clear how these two new subsections to section 30 meet the objection of the City of Oshawa. If I may re-state that objection from a letter addressed to me by the Mayor of Oshawa, he says:

You will have received by now a copy of Mr. McNeely's letter
—and he is the city solicitor—

to Senator Hugessen which I sent to you and you will have noted that in that letter the City has again taken the position that an amendment to section 30 of the bill, requiring the consent of city council before the Oshawa Harbour Commission was placed under the new legislation, would meet the city's objections.

In view of this, I do not see how this substantially meets that objection. As I understand it, as Senator McCutcheon pointed out, it merely says that there shall now be a by-law passed by the harbour commission.

Senator McCUTCHEON: Which must be served on the municipality, and cannot be acted on for 10 days, and that gives the municipality the opportunity to come down here and raise Cain.

Senator GROSART: But it still does not meet the essence of the objection of the city of Oshawa that the city council of the municipality, having an interest in the property, and so on, should itself give consent.

Could I ask why the amendment has not gone that far, so as to require the consent of the city Council of the municipality, rather than a mere by-law of the existing harbour commission—if that is the correct interpretation of the suggested amendment?

Mr. STEAD: It is true that this amendment does not go quite as far as the City of Oshawa would like. We are trying to establish national legislation, and only one or two have objected to this consent on the point that has just been raised.

First of all, I would like to reiterate that in the normal course any proceedings of this sort must go on with a substantial measure of agreement. Indeed, the city council has a member on the present harbour commission, who, if he is doing his job and a contentious issue comes up, will report back long before the 10-day waiting period, and if there is to be a row about it it will become evident early and will lead to some re-consideration.

As to why it was not taken quite that far, I can only say, without special reference to Oshawa, that as a general rule the interest of the federal Government in the harbour is, shall we say, predominate. In the first place, in the absence of a harbour commission it is the responsibility of the federal Government to operate the harbour as a public harbour, under the British North America Act.

Secondly, in many cases the financial involvement of the federal Government, through the Department of Public Works, results in the federal Government providing most of the assets from which the commission has its revenues.

Therefore, we perhaps feel in some way that we are the senior partner in this team, but it has to be a team, and I would like to reassure you, I do not think any government would do anything violent under this, and the minister felt this was sufficient protection for the city, coupled with the fact they have already representation on the commission which would be considering such a by-law.

Senator GROSART: I am not objecting to the statement the federal Government will not do anything violent, but it is given the power by proclamation, by the Governor General's proclamation, actually to take over the interest, generally the property interest of any municipality. There is a vested interest of these municipalities, and not only Oshawa, but others, in property that they have jointly developed and sometimes developed on their own, in this area of the harbour commissions, and which could now, under this provision, be taken over. This means the property is valuable to the individual municipality. I would like to be corrected if I am wrong, but my understanding is that property belonging to a municipality can now be taken over by a by-law of the commission, without the consent of the owners.

Mr. STEAD: No, sir. I would like to make it perfectly clear this bill in no way affects any property rights in the legal sense. I would like, if I may, to correct the expression "take over". There is no taking over involved. We are replacing one piece of legislation, in the event this clause is used in a particular case, by another; and I would point out there is very similar legislation in which the city is still assured its representative. So that no one is taking over anything. We are modifying and standardizing the clauses which govern harbour commissions which presently exist and provide for future ones.

The ACTING CHAIRMAN: When you have a harbour commission established the only property that is going to be dealt with is the harbour commission's property.

Mr. STEAD: Regarding Oshawa, I would like to add that in the case of many harbours where we have established commissions, the arrangement has been the city put their property in. In your case I think there was a lease arranged. There would be no disturbance of that lease as a result of any change if—and we do not have to—we applied the provisions of this act to Oshawa.

The ACTING CHAIRMAN: Honourable senators, I think we should advert to what Senator McCutcheon said a few moment ago. Mr. Stead has said the municipality will have representation on the harbour commission. It is also provided by the addition of subsection (2) to section 13, which we have passed, that:

Every by-law shall, at least ten days before its submission to the Governor in Council for approval, . . .

—that is, the by-law passed by the commission—

. . . be served upon the clerk of each municipality adjoining the harbour for which the Commission is established.

There is another "safety valve" to meet the problem you raise, Senator Grosart.

Senator LAMBERT: Might I also suggest, in view of what the witness has already said, that the underlying purpose of this bill is to stimulate and encourage enterprise and initiative on the part of the local harbour? That fits in very well with the statement made during the previous sittings of this committee, when I asked if these harbours included in this schedule were self-sufficient or self-supporting.

The statement was made that there had been a variation in water in a number of cases. If that is true, and I believe it is, it certainly leaves some room for development and improvement from a business point of view.

The ACTING CHAIRMAN: Honourable senators, Mr. Fortier, counsel for the department, has a word to say about this section.

Mr. FORTIER: I would like to point out that sections 9, 10 and 11 of the bill which deal with the general powers of harbour commissions are generally the same. They are just a rearrangement of the existing provisions in the statutes which apply to existing harbour commissions.

Senator ISNOR: Do sections 22 and 23 apply in the same way? I wonder if Mr. Stead would give us a little further information in regard to these sections? Are they in any other acts?

Mr. STEAD: Section 22 is substantially the same as the Oshawa act which exists now, and others. Section 23 is new because it was found on the odd occasion when seizures occurred, if perishables were involved, the red tape provided in the existing legislation provided difficulties. It means that goods on occasion became rotten.

Senator ISNOR: Has that been used to any extent?

Mr. STEAD: I believe there was a case where such problems arose, and it was considered wise to avoid difficulties in future.

Senator GROSART: What would be the effect if after 10 days' notice was given to a municipality the city council or municipal council passed a resolution objecting to this? What would happen then?

Mr. STEAD: This is not specifically provided for, but I certainly think the formal objections of a city bordering the harbour would have to be very seriously considered by the minister before he took any further action.

Senator GROSART: Thank you.

The ACTING CHAIRMAN: We have finished subsections 1 and 2 of the printed bill as amended. Subsection 3 comes up with the same corporations.

Senator GOuin: In the French text, because I am following you with the French text, in line 24 you will see that the words on the last page, paragraph 3 of section 30—in the French text it is on the 24th line—we have the words *tenue à toute fin pour*, and in the translation it says "shall be deemed", and I respectfully submit that I don't remember having seen the words "to be deemed" translated in French by *tenue à toute fin pour*. I would suggest that in French it ought to read *considéré être*. I am very sorry, but I believe we may run into difficulties. Perhaps it is used in other statutes, but I would really submit that it is not the kind of French I speak at university when I give a lecture and I would respectfully submit to replace the words *tenue à toute fin pour* by the words *considéré être*. If necessary I would move that amendment; it is line 24 of the English also.

The ACTING CHAIRMAN: Perhaps Mr. Fortier could speak on this.

Mr. FORTIER: As you know, Senator, legislation is drafted first in the English language, and the question of translation is not one that comes under the purview of the Department of Transport, but I will bring it to the attention of the Translation Branch, and suggest that they adopt the wording you have given us.

The ACTING CHAIRMAN: There is no need for an amendment?

Some Hon. SENATORS: No.

The ACTING CHAIRMAN: Could we then dictate to the reporter the wording Senator Gouin has proposed?

Mr. FORTIER: On page 9, line 24, of the French text of Bill S-38—

Senator GOuin: Replace the words *tenue à toute fin pour* by the words *considéré être*, and in the last line you would strike out the word *pour*.

The ACTING CHAIRMAN: Now section 31 deals with the interim application of certain amendments.

Senator MOLSON: Renumber paragraphs 2 and 3.

The ACTING CHAIRMAN: Yes; renumber paragraphs 2 and 3. Is section 31 agreed?

Some Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Now, the schedule. There is an amendment to the schedule. Strike out "The Toronto Harbour Commissioners' Act, 1911, chapter 28 of the Statutes of Canada, 1911," which is the first one mentioned.

Mr. STEAD: There seems to be a typographical error here somewhere because it says chapter 26. Anyway it is stricken.

The ACTING CHAIRMAN: Shall the schedule carry?

Some Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Shall the title carry?

Some Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: What is your wish about notifications to harbour commissions and municipalities and others who may be affected?

Senator MOLSON: Mr. Chairman, has there been any communication from the harbours mentioned in the schedule other than the ones referred to here?

The ACTING CHAIRMAN: The answer to that I think may be found in the report of the committee of October 30. There were telegrams received from North Fraser Harbour Commissioners, from Port Alberni Harbour Commissioners, from the City of New Westminster, and from the City of Port Coquitlam. Other than those the only representations heard were from Toronto, Hamilton and Oshawa.

Senator MOLSON: What did the telegram say?

The ACTING CHAIRMAN: Would you like me to read to you that portion of the evidence? I would be glad to do it.

Senator MOLSON: It seems we could decide whether to pass the bill or set it aside for further consideration.

The ACTING CHAIRMAN: The first telegram, and I am quoting now from page 8 of the report of October 30, is from the secretary of the North Fraser Harbour Commissioners and it reads as follows:

The North Fraser Harbour Commissioners having studied Bill S-38 are unanimously of the opinion that they do not wish to be brought under the bill.

And then the Chairman goes on:

I assume that means they do not oppose the bill in itself but do not wish to exercise the right under section 30 to come under it.

The second telegram is from Port Alberni Harbour Commissioners and it says:

Have reference to your letter of October 23, 1963 concerning a meeting to be held on October 30, 1963 by the Senate Committee on Transport and Communication in connection with Bill S-38, please be advised that the Port Alberni Harbour Commissioners have no objection to Bill S-38, an act to provide for the establishment of Harbour Commissions.

Then the report goes on—

Then this morning I received two telegrams, the first from the City of New Westminster, addressed to myself, and reading as follows:

The City of New Westminster objects to the passage of Bill S-38 in its present form on the following grounds.

Then it has three proposed amendments to various sections of the bill, which I have asked the Law Clerk to examine. I do not think they are of any urgency and perhaps we can defer consideration of them until we consider the bill clause by clause. Then they go on to say:

The City of New Westminster raises no objection to the balance of Bill S-38 and compliments the Government of Canada in proposing legislation to permit the expansion of the New Westminster Harbour Commission to five members representing in addition to New Westminster the neighbouring ten municipalities on the Fraser River.

And it is signed by the Mayor and council of the City of New Westminster. Then there is a supporting telegram, addressed to myself:

Request assurance that Bill S-38 will not be finally passed until the points raised by the City of New Westminster has been clarified stop your reply will be appreciated.

And it is signed by Reeve D. W. Poppy, Township of Langley, Murrayville, B.C.

Perhaps we could hear from the counsel to the Senate on this point.

Mr. HOPKINS: These were minor simple amendments, suggested word changes, and I raised the matter with Mr. Stead and Mr. Stead is prepared to speak to those amendments now.

Mr. STEAD: First of all, since these telegrams came in and since our last meeting, the Mayor of New Westminster was herself in Ottawa in connection with a meeting of mayors of municipalities, and she called to see me, and we discussed these points. She expressed herself as satisfied with them.

The ACTING CHAIRMAN: You mean there is another one?

Mr. STEAD: This is referring to New Westminster.

The ACTING CHAIRMAN: But you mean there is another one of them?

Senator MOLSON: You said "she".

Mr. STEAD: I am sorry, I am being too serious this morning. Yes, there is another one. I can go over these, if you like, but I can assure the committee that I have discussed these with the mayor and she expresses herself as being satisfied. The phraseology that they were objecting to is merely different from that in their existing bill, but it is the same as in other bills that have been passed by this committee in the past. In the present section 9, for example, the wording is "shall regulate and control the use and development of all land," etc. That is a standard phrase in all recent acts. It was new to them. They wanted it to say simply that the commission may regulate. This is a drafting point which I cannot comment upon except to say it has caused no trouble in other cases.

Senator MOLSON: Was she satisfied with the discussions?

Mr. STEAD: She expressed herself as being satisfied.

Senator LAMBERT: My impression is that with the amendments discussed here today this bill could be adopted now without further discussion.

The ACTING CHAIRMAN: I wonder if I might finish this portion of the other transcript—

I also received this morning a similar telegram to that of the New Westminster telegram from the City of Port Coquitlam, suggesting the same changes in certain clauses of the bill, and simply ending up by saying that the city raises no objection to the balance of Bill S-38.

What is the committee's wish?

Senator KINLEY: Report the bill.

Some Hon. SENATORS: Report the bill as amended.

The ACTING CHAIRMAN: Does the committee desire to give any instructions to the Committee Branch of the Senate about sending copies of this bill to harbour commissions or municipalities, or shall we simply report the bill and let it take its normal course?

Senator LAMBERT: I think that is advisable.

Senator ISNOR: What is "advisable"? I think we should do it as a matter of courtesy.

Senator THORVALDSON: Do you mean, send a copy of the complete bill, as amended?

Senator LAMBERT: Sure.

The ACTING CHAIRMAN: It would have to be reprinted for third reading anyway.

Senator KINLEY: Is this bill from the Commons?

The ACTING CHAIRMAN: No, it originates in the Senate. It is a Senate bill. Do you desire, honourable senators, that we recommend this bill to the Senate for passage, and thereafter send to the harbour commissioners and the municipalities affected a copy of the bill as passed?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: I should just like to say, in conclusion, that at the last meeting Senator Hugessen directed Mr. Hopkins, counsel of the Senate, to interest himself in the amendments. He tells me that he did participate in a discussion of these drafts and that he concurs in the wording that we now have passed.

Thank you very much indeed, honourable senators.

Whereupon the committee adjourned.



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First Session—Twenty-sixth Parliament

1963

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON

TRANSPORT AND COMMUNICATIONS

To whom was referred the

Bill S-38, An Act to provide for the Establishment of
Harbour Commissions.

The Honourable JOHN J. CONNOLY, *Acting Chairman*

No. 3

THURSDAY, DECEMBER 12 and
TUESDAY, DECEMBER 17, 1963.

WITNESSES:

Heard on December 12, 1963: Mr. G. W. Stead, Assistant Deputy Minister of Transport; Mr. Jacques Fortier, Counsel for the Department of Transport and Mr. J. H. W. Cavey, Chief, Harbour and Property Division, Department of Transport.

Heard on December 17, 1963: Mr. G. W. Stead, Assistant Deputy Minister of Transport; Mr. Victor K. Coppers, Mayor of the city of Hamilton; Mr. Foster Rodger, solicitor for the city of Hamilton; Mr. L. A. Gifford, Mayor of the city of Oshawa; Mr. E. J. McNeely, solicitor for the city of Oshawa; Mr. F. Malloy, Chairman of the Oshawa Harbour Commissioners.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1963

THE STANDING COMMITTEE
on
TRANSPORT AND
COMMUNICATIONS

The Honourable
ADRIAN K. HUGESSEN,
Chairman

The Honourable Senators

Baird,	Fournier	Méthot,
Beaubien (<i>Provencher</i>),	(<i>Madawaska-Restigouche</i>),	Molson,
Bishop,	Gershaw,	Monette,
Bouffard,	Gouin,	Paterson,
Bradley,	Haig,	Pearson,
*Brooks,	Hayden,	Power,
Buchanan,	Hollett,	Quart,
Campbell,	Horner,	Reid,
Connolly, (<i>Halifax North</i>)	Hugessen,	Robertson (<i>Shelburne</i>),
(<i>Halifax-Nord</i>),	Isnor,	Roebuck,
Connolly (<i>Ottawa West</i>)	Jodoïn,	Smith (<i>Kamloops</i>),
(<i>Ottawa-Ouest</i>),	Kinley,	Smith (<i>Queens-Shelburne</i>),
Croll,	Lambert,	Stambaugh,
Dessureault,	Lefrançois,	Taylor (<i>Westmorland</i>),
Dupuis,	*Macdonald (<i>Brantford</i>),	Thorvaldson,
Farris,	McCutcheon,	Veniot,
	McGrand,	Vien,
	McKeen,	Welch,
	McLean,	Woodrow—(49).

49 members (Quorum 9)

*Ex officio member

LE COMITÉ PERMANENT
des
TRANSPORTS ET
COMMUNICATIONS

L'honorable
ADRIAN K. HUGESSEN,
président

Les honorables sénateurs

49 membres (Quorum 9)
*Membre d'office

ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Wednesday, October 23rd, 1963.

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Lambert, seconded by the Honourable Senator Croll, for second reading of the Bill S-38, intituled: "An Act to provide for the Establishment of Harbour Commissions".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Lambert moved, seconded by the Honourable Senator Croll, that the Bill be referred to the Standing Committee on Transport and Communications.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 11th, 1963.

"Pursuant to the Order of the Day, the Honourable Senator Connolly (Ottawa West) moved, seconded by the Honourable Senator Molson, that the Bill S-38, intituled: "An Act to provide for the Establishment of Harbour Commissions", be read the third time.

In amendment, the Honourable Senator Roebuck moved, seconded by the Honourable Senator Lambert, that the Bill be not now read the third time but that it be referred back to the Standing Committee on Transport and Communications for further consideration.

After debate, and—

The question being put on the motion in amendment, it was—

Resolved in the affirmative."

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, December 12, 1963.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 2.00 P.M.

Present: The Honourable Senators Connolly (*Ottawa West*), Croll, Fournier (*Madawaska-Restigouche*), Hollett, Kinley, Lambert, Lefrancois, Macdonald (*Brantford*), McCutcheon, McLean, Molson, Quart, Roebuck, Smith (*Queens-Shelburne*), Stambaugh, Veniot and Woodrow.

In the absence of the Chairman and on Motion of the Honourable Senator McCutcheon, the Honourable Senator Connolly (*Ottawa West*) was elected acting chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel. The Official Reporters of the Senate.

Bill S-38, An Act to provide for the Establishment of Harbour Commissions, which was referred back to the Committee by the Senate on December 11th, 1963, for further consideration, was discussed.

Again heard in explanation of the said Bill were Mr. G. W. Stead, Assistant Deputy Minister of Transport; Mr. Jacques Fortier, Counsel for the Department of Transport and Mr. J. H. W. Cavey, Chief, Harbour and Property Division, Department of Transport.

After discussion and on Motion of the Honourable Senator Roebuck it was ordered that a telegram be sent immediately by the Committees Branch to the Harbour Commissioners mentioned in the Schedule of the said Bill, and also to the Mayor of each city referred to in the Schedule of the Bill, advising them that the Standing Committee on Transport and Communications will hold another meeting on Tuesday, December 17th, 1963, at 10.30 A.M., in Senate Committee Room No. 256-S.

At 2.50 P.M. the Committee adjourned until December 17th, 1963, at 10.30 A.M.

Attest.

Gérard Lemire,
Clerk of the Committee.

TUESDAY, December 17, 1963.

Pursuant to adjournment and notice the Standing Committee on Transport and Communications met this day at 10.30 A.M.

Present: The Honourable Senators Baird, Connolly (*Halifax North*), Connolly (*Ottawa West*), Croll, Fournier (*Madawaska-Restigouche*), Gouin, Hollett, Lambert, Lefrancois, Macdonald (*Brantford*), McCutcheon, Molson, Paterson, Power, Roebuck, Smith (*Queens-Shelburne*), Stambaugh, Veniot and Woodrow. 19.

In the absence of the Chairman and on Motion of the Honourable Senator Croll, the Honourable Senator Connolly (*Ottawa West*) was elected acting chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel of the Senate. The Official Reporters of the Senate.

Bill S-38, An Act to provide for the Establishment of Harbour Commissions was further considered.

Further heard in explanation of the Bill was:—Mr. J. W. Stead, Assistant Deputy Minister of the Department of Transport.

Heard in opposition of the Bill were : Mr. Victor K. Copps, Mayor of the city of Hamilton; Mr. Foster Rodger, solicitor for the city of Hamilton; Mr. L. A. Gifford, Mayor of the city of Oshawa; Mr. E. J. McNeely, solicitor for the city of Oshawa and Mr. F. Malloy, Chairman of the Oshawa Harbour Commissioners.

After discussion, the Honourable Senator Power moved that the further consideration of the Bill be adjourned “sine die”, the question being put on the said Motion, the Committee divided as follows:—

YEAS

8

NAYS

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The Motion was declared passed in the affirmative.

At 12.30 P.M. the Committee adjourned to the call of the Chairman.

Attest.

GERARD LEMIRE,
Clerk of the Committee.

THE SENATE

THE STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

EVIDENCE

Ottawa, Thursday, December 12, 1963

The Standing Committee on Transport and Communications to which was referred Bill S-38, to provide for the establishment of harbour commissions, met this day at 2 p.m., to give further consideration to the bill.

Senator JOHN J. CONNOLLY (*Acting Chairman*), in the Chair.

The ACTING CHAIRMAN: Honourable senators, this meeting results from a reference back to the committee on a motion yesterday of Senator Roebuck on Bill S-38. This bill was reported upon by this committee after its meeting on December 5 last. I do not intend to attempt to recapitulate what was said yesterday in the Senate; that is a matter of record. However, I would like to say to the committee that I have been given a telegram which was received on December 11, or appears to have been received on December 11, addressed to Senator Hugessen, chairman of this committee, from Victor K. Copps, mayor of the City of Hamilton, and it reads as follows:

I have reviewed the amendments that were proposed in the second sitting of Senate Standing Committee on Transport and Communications in relation to the Harbour Commission bill S-38. These amendments are not repeat not acceptable to the Corporation of the City of Hamilton. I respectfully urge that the Hamilton Harbour Commissioners Act be excluded from the schedule in the same manner as the amendments propose to strike out the Toronto Harbour Commissioners Act. Unless the Standing Committee agrees to this exclusion I earnestly request an opportunity to make further submissions in view of assurance given when I appeared before the committee on October thirtieth last that we would be notified by the Clerk of the Senate of the date of the adjourned meeting.

Senator ROEBUCK: Is that a different telegram from that read in the house?

The ACTING CHAIRMAN: This telegram is additional to the one I read into *Hansard* yesterday from the same official. Honourable senators, there are a number of matters that I know members of the committee would like to deal with. Mr. G. W. Stead, Assistant Deputy Minister, Marine Section, Department of Transport, is here, as is Mr. Jacques Fortier, Q.C., counsel for the department. Mr. W. J. Manning and Mr. J. H. W. Cavey, who attended the last meeting, are also present. What is your pleasure as to the method of proceeding today?

Senator ROEBUCK: Mr. Chairman, as I moved the motion to refer the bill back to committee I think I had better say something as to why I did that, and what I suggest we should do.

Honourable senators will realize, I hope, that I have no special interest in this bill, any more than has any other senator here. I do not live in the City of Hamilton, except that I was born there—

Senator McCUTCHEON: You can overcome that.

Senator ROEBUCK: Yes, I have overcome that.

Senator MACDONALD (*Brantford*): Hamilton is still proud of that fact.

Senator ROEBUCK: Thank you. I have not had any conversations with either the representatives from the City of Hamilton or from the City of Oshawa. I acted entirely on my own account because I did not think we were doing our duty properly. I might add that neither Senator Croll nor I were able to be present at that second meeting, and the Chairman of the committee, who presided over the first meeting, was ill, so the committee at that time did not have the memory of all three of us as to what took place. However, there is no doubt but that we gave a clear and definite undertaking that at least these three parties would be notified of any further meeting of the committee to consider the amendments which the department undertook to make to the bill. They were not given that notice, and, therefore, there is no need to go back over old ground, or to thrash dead horses, or anything of that kind. They were entitled to the notice and to the principle of appearing here to express their opinions. What took place between this individual and the witnesses who appeared on that occasion I do not know. I am not interested in what was said by one or another. We are, I think, under a moral obligation to give these people proper notice, and to hear their representations.

So that we concentrate on that one point, I move that notice be given to all parties, the commissions and the municipalities, at least one week prior to the next meeting of this committee when the subject will be considered.

The ACTING CHAIRMAN: That is a motion, gentlemen.

Senator MACDONALD (*Brantford*): Of course, Mr. Chairman, that means the bill will not be considered at this session because Parliament will almost certainly be prorogued shortly after one week has expired.

Senator KINLEY: I thought these people were to be notified after we met the other day. Were they not notified to be here?

The ACTING CHAIRMAN: I do not think that was the understanding. I think the notification Senator Roebuck is referring to is the notification which was promised at the meeting of October 30.

Senator KINLEY: But then we had another meeting just the other day, and that matter was brought up, and they do not seem to be here.

Senator HOLLETT: There is a motion before the committee. I second that motion.

Senator ROEBUCK: Thank you.

The ACTING CHAIRMAN: You do not need a seconder in committee, senator. The motion is properly before us.

Senator MACDONALD (*Brantford*): Another matter to be considered, Mr. Chairman, is that if this bill is considered a week from today, and if by some miraculous means it passed the Senate and went to the other house, there would be no chance of the bill being passed by the other house this session.

The ACTING CHAIRMAN: Even if it were passed today?

Senator MACDONALD (*Brantford*): If it passes today then that is a different story.

The ACTING CHAIRMAN: Even if it were passed today?

Senator MACDONALD (*Brantford*): If it were passed today, that is a different story. I am speaking to the motion at the present time. If this motion carries the bill cannot possibly go through Parliament this session.

Senator KINLEY: And it dies altogether.

Senator MOLSON: Does Senator Roebuck feel it is necessary to give seven days notice? If it were next week and they were able to appear on Tuesday or Wednesday, it might be possible still to deal with the bill and hear them and report the bill.

Senator ROEBUCK: I would like to go a little further, but I do not want to drive too far. I would like to see the bill, as amended, sent to all the municipalities and harbour commissioners set forth in the schedule.

The ACTING CHAIRMAN: Would you mind clarifying one point for me? You say, "all the people concerned". Now you say, "all the municipalities and harbour commissioners mentioned in the schedule". That is excluding Toronto, which has already been dropped?

Senator ROEBUCK: Yes, excluding Toronto, of course. That assumes, of course, the amendment with regard to Toronto will stand. I do not think there is any question about that.

Senator McCUTCHEON: Let us not raise that question. Let us have one thing settled.

The ACTING CHAIRMAN: I do not think there is any question about that.

Senator LAMBERT: Is it necessary to have the representatives of Hamilton and Oshawa back here to re-emphasize all they have put in writing in these wires?

The ACTING CHAIRMAN: Perhaps we might discuss the Hamilton telegram which we have just had. What they ask for is that they be excluded. I do not know what the feeling of the committee is, or what the feeling of the officers of the department, on instructions, would be in respect of that request. This might cure at least one thing, if it were decided one way.

We still have the proposal of the municipality of Oshawa, through their city solicitor, that they would like to have the bill provide that the harbour commission of Oshawa should not come under the purview of this bill until the city council of Oshawa had by by-law approved the move. That is their definite request. Hamilton's definite request is that their harbour commission be excluded from the schedule.

Senator ROEBUCK: If I understand you aright, Mr. Chairman, the solicitor's stand from Oshawa is that they shall not be included in the bill unless the municipality gives its consent?

The ACTING CHAIRMAN: There may be a refinement there that I do not remember. Have you got the telegram there?

Senator ROEBUCK: Yes I have it here.

The ACTING CHAIRMAN: Would you read it, senator? Or I will, if you would like to hand it to me.

Senator ROEBUCK: I have it right here.

Hon. Mr. Connolly (*Ottawa West*): . . .

The other telegram that I have, also addressed to Senator Hugessen, was received on December 9. It read:

Re Bill S-38 City of Oshawa's position remains as stated in letter to Senator Hugessen, committee chairman, dated October 31/63. The amendments proposed by Department of Transport are substantial improvements on original bill S-38. The city still takes position that section 30 should be amended to required consent of municipality before its harbour commission is placed under the general act. City regrets it did not receive more notice of committee meetings. E. G. McNeely, City Solicitor, Oshawa.

So there is no question about it. That is the position he took at the first meeting of this committee.

Senator McCUTCHEON: The department endeavoured to meet that by the provision, first, that bringing a harbour commission under this bill there had to be a by-law of the commission, a formal act; and, secondly, that that by-law had to be served on the municipality ten days before any action was taken on it by the Governor in Council. This gives the municipality ten days to get after its members of Parliament or anybody else who can influence the Governor in Council.

Senator ROEBUCK: They are not satisfied with that, and I may say that I would not be satisfied either.

Senator McCUTCHEON: What can they say that they have not already said? What can the City of Hamilton say? We can throw this bill out and say it will not be dealt with during this session. The minister has told us there were urgent situations to be dealt with but he has not indicated that this is one of them. He says he wants this legislation if at all possible. If we adopt this motion, we might just as well put the bill in our pockets and forget about it.

I have read the evidence again and, if we bring them down, they will not say anything more than they have already said. We have gone a long way to satisfy them. True, the commissioners are appointed by the Governor in Council, and one by the city council. One of the things the mayor was concerned about, and it has been adjusted, is that they are exactly in the same position as to the composition of the commission if they ever come under the new bill, and there is no guarantee they will. But if they ever do come under it, the composition of the commission is established exactly in the same way as it is now. I don't see that they can add anything to our discussions except to repeat what has already been said.

The ACTING CHAIRMAN: Honourable senators, would this be a favourable suggestion? We have the assistant deputy minister here and he knows of these two proposals. Would it be appropriate to hear him at this stage and see what he has to say about the proposals, and if Senator Roebuck feels he would like to press his motion either in its present form, or alter it in the light of the discussion and the facts brought to bear on the issue, then we can go on.

Senator ROEBUCK: I would be satisfied with that.

The ACTING CHAIRMAN: Mr. Stead, would you discuss the two points, the first being the position taken by Hamilton in the telegram we have put on record today.

Mr. G. W. Stead, Assistant Deputy Minister, Marine Section, Department of Transport: Mr. Chairman and honourable senators, I would first like to say that I was chagrined that events did not bear out the statements I made before, and I hope you will accept my apology for any confusion caused. I can only say that it was my impression at that time.

With regard to the substance of the Hamilton proposal, I would like, if I may, to agree with Senator McCutcheon in mentioning the similarity between the setup proposed and the setup they have there now. There is no taking over of assets or anything of that nature involved, even if this bill were ever applied. I feel it would be unfortunate to make an exception where there are no substantial reasons, as in the case of Toronto. Most honourable senators heard the late Mayor Summerville describe the involvement that commission has in land unrelated to the harbour neighbourhood. We agreed that this would take a lot of unscrambling, and would not lend itself readily to being brought under this bill, if we ever wished to do so, by the various methods described in the bill. I am not aware of any situation in Hamilton

which makes the two cases parallel. Therefore I would argue that the Hamilton Commission ought to be treated like all other commissions in Canada.

Again I would emphasize the warnings with which we have been provided, and my own minister's feeling that it is inconceivable anything could be done without consultation in cases like this. The fact of the matter is, and this moves me into the Oshawa situation, that the Federal Government is basically responsible under the B.N.A. Act for navigation and shipping.

Before the formation of a harbour commission in any particular place the Department of Transport was responsible for the harbour and it seems also an unfortunate posture, shall we say, to have the federal Government, given those facts, to have to ask for the permission of a municipality, a corporation set up by the province, as to whether it can legislate. We feel we have gone as far as it is reasonable for the senior Government to go in that situation by way of the amendments we have already laid before you.

Senator ROEBUCK: May I ask this question: Does the Harbour Commission Act of Hamilton provide that the net revenue of the harbour shall be paid to the city treasury?

Mr. STEAD: Yes, sir.

Senator ROEBUCK: And does the new bill provide that the revenue of the harbour shall be paid to the Receiver General of Canada?

Mr. STEAD: Yes, sir.

Senator ROEBUCK: Is there any suggestion of the senior body asking permission of the junior body, the municipality—because we have given them an opportunity to express their views prior to our taking arbitrary action?

Mr. STEAD: I am sorry, Senator Roebuck, I did not get the beginning of that question.

Senator ROEBUCK: Is there any suggestion of our taking a secondary position as a senior legislative body, you have said something to this effect—because we have heard the representations of the junior body before we took arbitrary action?

Mr. STEAD: Oh, no, Senator Roebuck.

Senator CROLL: The question Senator Roebuck asked concerns the fact that in one case the excess funds were going to the City of Hamilton and in the second case they are going to the dominion. I understood you to say that.

Mr. STEAD: Yes.

Senator CROLL: Why?

Mr. STEAD: As a matter of fact there aren't any surplus funds.

Senator CROLL: But why?

Mr. STEAD: Simply because we do not ask the city to contribute cash, under the existing arrangement or the proposed arrangement, to harbour works. That is not what cities were set up for. The harbour commission is the recipient of revenues that were opened in large measure from investments made by the Department of Public Works to the federal Government, and we have a policy in which new works that a harbour commission proposes but cannot completely afford from their own revenues or bonded indebtedness based on their revenues, that the federal Government through Public Works stands ready to supplement these funds and says that the harbour commission should have the facilities it needs. It seems to us if that is the case any surplus revenues generated should go back to the noncommissioned body providing those funds rather than to another entity.

Senator ROEBUCK: I wonder if it would not have been wise to have said all that in the act prior to the Harbour Commission of Hamilton accepting cash from the City of Hamilton and releasing its claims to the bed of the harbour and making a grant of certain shorelands as well.

The Mayor of Hamilton said they had a stake of \$100 million in that harbour acquired under an act of Parliament. What your argument is, that the money should go to the dominion rather than to the municipality—should that not have been put in the private act prior to these transactions taking place?

Mr. STEAD: I cannot really go back that far, because in this case we are talking about a pre-First World War act, and the reason we went into it at that time is unknown to me. My point is that under present practices and policies, which are presumably not the same as they were 40 or 50 years ago, the logic seems to run the other way. Does that seem to answer your question? That is the best answer I can give.

Senator ROEBUCK: I suppose that is the best answer you can give.

Senator HOLLETT: What is the objection to excluding Oshawa and Hamilton any more than Toronto? Are there any objections to excluding them? If they could be excluded, we could go ahead and pass the bill.

Senator ROEBUCK: Yes.

Mr. STEAD: It becomes a running sore. We have conceived this bill as a standing one that would make the administration of harbour commissions correspond across the country and I do not really think I should say that my minister would be willing to make further exclusions. Certainly I would not do it without consulting him.

Senator CROLL: It certainly is not in the same class with Toronto and Hamilton. It is in a different category entirely. What troubles me is that, aside from what is wrong in the act, someone in the department must realize that Hamilton is next door to Toronto and Toronto is next door to Hamilton, and Hamilton feels it is left out in the cold and would like to be treated in the same way as Toronto. That is what bothers them, in my view, and that should be considered. That is why we are getting this objection. We can ram it down their throat but we are going to have that little bit of pride upset in Hamilton, and I do not see why we should.

The ACTING CHAIRMAN: May we say it this way, then, that we are faced with this position, that as a matter of policy the decision is that at least at the moment the Government is not willing to remove Hamilton from the schedule. Is that so?

Mr. STEAD: That is right.

The ACTING CHAIRMAN: Let us deal with the Oshawa question now. Is that satisfactory to the committee?

Senator LAMBERT: With respect to the situation in Hamilton, has this committee had enough evidence from Hamilton yet as to the amount of money that city has invested in this project, on its own?

The ACTING CHAIRMAN: I do not know whether it was as full as the committee might want it, but it was given in some measure on October 30.

Senator MOLSON: Have we any evidence as to what extent the federal Government has expended in the Hamilton harbour?

Senator McCUTCHEON: Both of those are in the record for October 30.

The ACTING CHAIRMAN: I do not think it constitutes a complete statement, but it gives a lot of it.

Senator ROEBUCK: May I read what Hamilton said? It is given in the printed report of the proceedings of this committee on October 30 last, at its first meeting, on page 33. It reads as follows:

Section 16 of the Hamilton Harbour Commissioners Act, 1912, provides among other things that any surplus profits shall be the property of the City of Hamilton and shall be paid over by the commissioners to the city treasurer.

The city has refrained from exercising its statutory rights to require payment-over of any surplus profits. The city has made grants to the Hamilton Harbour Commissioners of cash in the amount of \$174,000.00, and of land in the amount of approximately 100 acres along the shore of the harbour which I am informed is worth at least \$25,000.00 an acre or \$2,500,000.00. In addition to the shore property, the City in 1948 relinquished its interest in the bed of Hamilton Harbour representing approximately 6,400 acres which includes 390 acres of undeveloped waterlot area inside the harbour headline which I am informed is worth at least \$1,500.00 per acre or \$585,000.00.

While the balance sheet for the Hamilton Harbour Commissioners for 1962 shows assets in excess of \$15,000,000.00, it would be more realistic to say that the city by not requiring payment of surplus profits by land grants along the shore of the harbour, and by relinquishment of its interest in the harbour bed, has a stake in the harbour that represents an asset which it would be more accurate to say is worth \$100,000,000.00.

The ACTING CHAIRMAN: Thank you, senator. That being on the record, does the committee desire now to hear Mr. Stead on the representations made by telegram by the city solicitor of Oshawa?

Mr. STEAD: Thank you, Mr. Chairman. I thought I had mentioned that. This is the point about whether the city council should be entitled, shall we say, to veto power in this connection?

The ACTING CHAIRMAN: Shall be required to give its consent before an order in council is passed putting the harbour commission of Oshawa under this act.

Mr. STEAD: Yes, that is better put, thank you. I think I said earlier that the fundamental responsibility for harbours is federal. It is customary in all cases for the city, if it has foreshore property, to double that in along with the foreshore property towards breakwaters, and so on, in possession of the federal Government at the time; and the new bill, if it is ever applied to Oshawa, in no way changes that relationship. Furthermore, we feel in the department that the federal Government, being the senior partner and the one who has the ultimate responsibility for harbours, should be permitted, shall we say, to legislate without the consent or without the requirement of the consent of a municipal council. We feel we have gone a long way in meeting the substance of the objections by providing for notice in the formal act, and so forth, remembering always that the commission as set up now will be, if this bill is ever applied there, both provide as a matter of obligation for a city representative, presumably who knows what is going on, and would be a party to whatever bylaw is passed by the harbour commission; and I would assume that if he is doing his job, he would report any contentious issue that might arise to those who appoint him. We feel that there is adequate protection, there is no possibility in practice of arbitrary action being taken by one party without the knowledge and consent in fact of the other.

Senator ROEBUCK: That is being proposed right now. How much was given to the city of Oshawa by the harbour commission on the passing of the act in 1930?

Mr. STEAD: I think it is later than that.

Senator ROEBUCK: Yes; the act in 1960?

Mr. STEAD: Yes, sir. As I understand it, and I have not checked the records lately, the usual arrangements were made, perhaps informally before the act was passed, whereby the city would contribute land. In fact, all that the later city council was willing to do was to lease the land to the harbour commission. So far as I know, and I may be wrong, this is the only case where this happened. Is that right, Mr. Cavey?

Mr. CAVEY: Yes.

Senator CROLL: I should think the best thing they can have is a nice rich partner. Hamilton is in a better position entirely.

Senator ROEBUCK: I do not think so. May I put this on the record, Mr. Chairman. I am reading from page 43 of the transcript of evidence of the first meeting of this committee, which was held on October 30 last. This is what Mr. McNeely, the city solicitor of Oshawa said:

When the act setting up the Oshawa Harbour Commissioners was passed we turned over to the harbour commissioners certain city owned land. In fact, we have turned over to the harbour commissioners approximately 55 acres of land in the vicinity of the harbour, and this land has a value of roughly \$250,000.

Senator McCUTCHEON: He said "turned over"; but it came out subsequently, I think, that they actually leased the land.

Senator ROEBUCK: If so, it was a long lease, anyway.

Senator McCUTCHEON: They still have a long lease.

Senator CROLL: How much did we spend?

Mr. STEAD: I think I have it here. Oshawa, so far, is \$2 million-odd.

Senator CROLL: \$2 million-odd since 1960?

Mr. STEAD: This may go back further than that. These figures were given to us by Public Works, and they may go back further than that.

Senator CROLL: The dominion Government has invested \$2 million there, and that is a great advantage to it.

Senator ROEBUCK: I am not arguing against this bill at the moment. At the moment I am only arguing that these people who have invested money as well as land and who have a very large interest, should be given the opportunity of coming here. I have no axe to grind.

The ACTING CHAIRMAN: That is right, and that is the purpose of the motion, of course. We are still on the Oshawa matter, and I put this question on behalf of the committee to Mr. Stead: What, in effect, you say is this, that you have amended clause 13 of the bill to provide that every by-law passed by a harbour commission must, at least ten days before its admission to the Governor in Council, be served upon the clerk of every municipality adjoining that harbour?

Mr. STEAD: Which is represented; yes, sir, that is right.

The ACTING CHAIRMAN: I put to you this direct question: I take it from the policy point of view you do not want to go any further than that, so that you do not want to meet this objection that is put in the telegram from the City Solicitor of Oshawa?

Mr. STEAD: No, sir.

The ACTING CHAIRMAN: Now, honourable senators, I think we have this before us, that both the proposal which came from the City of Hamilton and

the proposal which came from the City of Oshawa are such that the department does not feel it can accept either of them. What we are now faced with is Senator Roebuck's motion.

Senator CROLL: What is the motion? I was not here.

The ACTING CHAIRMAN: The motion is to adjourn the committee at the moment and to send notice of the adjourned meeting of the committee at least one week in advance of the date of the sitting of the committee.

Senator ROEBUCK: I would modify the period of one week. Certainly I would settle for a time which would enable them to get here in a decent manner, and so agree or disagree with the bill as amended.

Senator KINLEY: Does that mean in practice that we would lose the bill?

The ACTING CHAIRMAN: As Senator Macdonald points out, at this late date in the session the bill may well be lost.

Senator ROEBUCK: It is lost anyway.

The ACTING CHAIRMAN: The committee can do what it likes about the bill. The committee can make these amendments, if it sees fit to do so. There is another suggestion that I think we should perhaps consider. It has not been made yet, so I will make it now. We could perhaps within reason meet very early next week—perhaps Tuesday night after the Senate rises—

Senator MACDONALD (*Brantford*): Perhaps we could meet Tuesday morning before the Senate sits. I think the Senate will be sitting on Monday night.

The ACTING CHAIRMAN: Perhaps you would like to adjourn the committee until then and give notice to these municipalities so that they can be heard, and then pronounce upon the sections.

Senator HOLLETT: That is Tuesday morning?

The ACTING CHAIRMAN: Yes, Tuesday morning. Does that help at all, Senator Macdonald?

Senator MACDONALD (*Brantford*): I do not think it will help a bit because I cannot imagine this bill going through the House of Commons even if it gets third reading in our house Tuesday afternoon. There is a possibility, I suppose. We can try. I think it will be a useless exercise myself, but...

Senator McCUTCHEON: Mr. Chairman, I recognize the position that we are in as a result of the failure to give the notice which was undertaken to be given at the meeting of October 30. In the meantime this committee has approved certain amendments to the bill, and the bill has received second reading, as I understand it, in the Senate, and the amendments made in committee have been approved. It is unfortunate that the notice was not given, but personally I do not think that if it had been given there would have been any representation made to us that had not already been made and placed on the record. Since then the parties have had an opportunity to know what the amendments are, as is evidenced by the telegram that you read earlier today, Mr. Chairman, and as evidenced by the telegram from the city solicitor of Oshawa.

We have learned our lesson, and we will see to it that people are notified in such circumstances in future, but what do we gain in having them come down here to repeat what they have already said, because they made careful submissions and they have made no new submissions in their telegrams? They have brought up two very simple points, easily understood. That is their position.

I say this committee should act today and decide whether we are going to accept those submissions and amend the bill further, or whether we are

going to report the bill back without any further amendment, and get third reading and get it through to the House of Commons.

Senator CROLL: Mr. Chairman, I am not concerned about amending or not amending the bill. If the Government says, "This is the bill and we will not do anything else with it," then I will support the bill. However, I think there is something else involved here. I did not raise the point, but Senator Roebuck did. I remember way back the expression, "the word of an Englishman" being used in the context that you could depend on what he said. This Senate has a great reputation. We have made a mistake. I was here at the committee meeting, and if Senator Hugessen had been back and if you were not unfortunately thrown into the position of acting as chairman, this might not have happened. It was nobody's fault. As the senator says, we have not carried out our duty, and if it takes a day or ten days they have to be invited to come down here, and we will vote on the bill as it is placed before us. I do not like the bill, but I will support it. At some future date when we give an undertaking, we do not want the comment thrown up to us: "You gave an undertaking on another occasion, and it did not work out too well". We have made a mistake; let us correct it. If they had not raised this point we need not have done anything about it. But they have, and that is the situation we are faced with.

Senator ROEBUCK: It is a question of honour.

The ACTING CHAIRMAN: While we all regret Senator Hugessen was not here and I do not want to go defending myself, I made a very special point of reading into the record every word that was said about notice at the last meeting.

Senator CROLL: I was not here, I am afraid.

Senator ROEBUCK: There is no blame to be attached to the present acting chairman of this committee.

Senator McCUTCHEON: There never is.

Senator MOLSON: Why could we not have had them here today?

Senator ROEBUCK: We did not have time. The resolution was passed only yesterday afternoon.

Senator MOLSON: But it does not take long to get them down here.

Senator HOLLETT: Why can't we have them at the earliest possible date, with a view to getting it through both houses?

Senator ROEBUCK: I will alter my resolution to Tuesday, if that will meet with the approval of the committee.

Senator LAMBERT: Mr. Chairman, am I permitted to say something? As the sponsor of this bill in the first place, I think it should be stated that it was quite obvious right from the beginning that this bill had been submitted to Parliament through us first, without sufficient consideration beforehand, in the light of the particular interests of all the municipalities represented in the appendix to this bill. It was quite obvious right at the very beginning there were conflicting clauses in this bill, and finally it had to be adjusted. Having gone that far we discover again, after the last sitting, that there are two other communities represented in the appendix to this bill that are not satisfied with it. Whether it is *infra dig* or whether it is not, I think it is the place and duty of this community of the Senate to see that the minorities, if you like to call them that, or any other entity that has a question mark about any legislation coming from the federal authority, are satisfied in their own mind that it is fair and just. For that reason I would suggest you defer final consideration of this bill until you can hear both Hamilton and Oshawa, to the satisfaction of this committee and themselves.

Senator McCUTCHEON: You are not suggesting they have to be satisfied before we pass a bill?

Senator VAILLANCOURT: They are parties to this bill, and in section 30 there seems to be a certain amount of conflict of thinking. As I understand it, the witness suggested that they should not be subject to the requests or to the decision of the municipality. But section 30 says:

30. (1) The Governor in Council may, with the consent of a majority of the members of a commission established by any Act set out in the Schedule hereto, by proclamation declare that commission to be established pursuant to this Act as of the day fixed in the proclamation,...

Senator McCUTCHEON: We amended that section. That was one of the sections subject to quite extensive amendment.

Senator VAILLANCOURT: I know, but the spirit of the thing was, in the beginning, that there would not be any action taken by the federal authority without the consent of the municipality concerned. Personally I think we should not be too prone to exercise too much central authority in these things.

Senator MACDONALD (*Brantford*): I think we are undergoing a futile exercise here. The House of Commons certainly will not consider further legislation this week except the old age pensions bill. That takes care of the time up to Monday and Tuesday in which they may be considering legislation. After that when they sit, new legislation sent from this house will not be considered by the House of Commons, and I think it would be useless expense to bring people from Hamilton, say, down here on Tuesday or Wednesday to hear evidence before the session prorogues. I think we should just rise *sine die* and let the bill stay where it is.

Senator ROEBUCK: Let it die on the Order Paper.

Senator MACDONALD (*Brantford*): It will die in our house or in the other house.

Senator ROEBUCK: It will die there if we send it over in this condition.

Senator VAILLANCOURT: Surely we could find out from these people if it is convenient for them to come here early in the new year.

Senator MACDONALD (*Brantford*): In the new year there will be a new session. But if we don't report the bill now it will automatically come up next session.

The ACTING CHAIRMAN: We have a motion, and Senator Roebuck, having heard the discussion, may want to amend his motion or withdraw it, or Senator Macdonald (*Brantford*) may want to move. I am in your hands, gentlemen.

Senator ROEBUCK: I think I will not withdraw it, Mr. Chairman, but I might change it to say we will meet Tuesday although I don't see there is very much to be gained by doing so. From what I have heard I don't think the bill will get through the Commons in this shape.

The ACTING CHAIRMAN: Your motion is that the committee adjourn until Tuesday?

Senator ROEBUCK: That is my motion.

Some Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: We have another practical problem to face, and that is notice. I have thought about this matter in the event we should come to this point. I would suggest that we instruct the Clerk to advise all harbour commissions and municipalities affected in this schedule by telegram today that a meeting of this committee will be held Tuesday next to consider Bill S-38,

and that as soon as possible, and before the end of the week in any event, each of these people so wired should receive a copy of the bill and the amendments which are not printed and will not be printed until after third reading. We have the amendments in mimeographed form. There are eleven. There were twelve.

Senator ROEBUCK: They can be sent by air mail.

Senator MCCUTCHEON: They will get there the week after Christmas.

The ACTING CHAIRMAN: Is there any other material you would like to have sent to these municipalities?

Senator MCCUTCHEON: Send them a copy of the British North America Act.

Senator ROEBUCK: Can we send them a record of the three meetings?

The ACTING CHAIRMAN: The clerk informs me that the report of the committee of Thursday, December 5, has already been sent to all harbour commissions and all municipalities affected by the schedule so that they have that material.

Senator MCCUTCHEON: The Mayor of Hamilton in his telegram said that he had read the amendments.

The ACTING CHAIRMAN: So it will be sufficient to send a telegram for a meeting on Tuesday morning?

Agreed.

The Committee adjourned.

OTTAWA, Tuesday, December 17, 1963.

The Standing Committee on Transport and Communications to which was referred Bill S-38, an Act to provide for the Establishment of Harbour Commissions, met this day at 10.30 a.m. to give further consideration to the bill.

The CLERK: Honourable senators, is it your pleasure to elect an Acting Chairman?

Senator CROLL: I move that Senator Connolly (*Ottawa West*) be elected Acting Chairman.

Some Hon. SENATORS: Agreed.

Senator JOHN J. CONNOLLY (*Acting Chairman*), in the Chair.

The ACTING CHAIRMAN: Before we proceed, honourable senators, perhaps I should say I have received some telegrams which I will read into the record. They were given to me, which I think is a little presumptuous because each time the committee assembles without its permanent chairman one has to be elected, and two or even three times does not make a precedent, so anyone is eligible.

Senator PATERSON: Mr. Chairman, I have here a telegram from the head of the Lakes.

The ACTING CHAIRMAN: Where is that from, senator?

Senator PATERSON: From the Mayor of Fort William and the Mayor of Port Arthur. I wish to give it to you to read.

The ACTING CHAIRMAN: Thank you very much.

Honourable senators, could I read this telegram into the record? It is signed by Mayor Saul Laskin, Port Arthur, and Mayor E. H. Reed, Fort William, Ontario, and it is addressed to Senator N. M. Paterson, Ottawa.

Senate Committee on Transport and Communications meeting tomorrow at 10.30. We have noticed with interest Bill S-38 presently before the committee and would like to make one objection. In report number 2, 5th of December, 1963, on the proceedings of the committee at page 70 Senator Grosart touches on a problem of territorial jurisdiction a part of which has concerned us academically since 1959 and in that year we discussed with the Lakehead Harbour Commission and the Department of Transport the need for amendment to the Lakehead Harbour Commissioners Act. Although we have not pursued it since early in 1960 we are of the opinion that this problem is of such importance that it should be considered at greater length with a view to eliminating any territorial jurisdiction that is not essential to the functioning of the commission. With great respect we feel the problem should be studied more intensively before this bill becomes law. Senator Paterson: We have decided against asking for an adjournment for fear any adjournment that might be granted would be too short to allow us to prepare an adequate brief. Our sincere thanks to you for your very kind assistance.

Senator PATERSON: Mr. Chairman, I ask that the federal representative from Port Arthur, Mr. Douglas Fisher, and Mr. Hubert Badanai of Fort William might attend.

Senator CROLL: Mr. Badanai was here earlier this morning.

Senator PATERSON: I do not know whether they have anything to say.

Senator CROLL: Mr. Badanai spoke to me and to Mr. Stead and the chairman in order to clear the way on behalf of his group.

Senator LAMBERT: Mr. Fisher is representing Port Arthur.

The ACTING CHAIRMAN: I have another telegram, addressed to Mr. Harvey Armstrong, Chief Clerk of Committees of the Senate, from Vancouver, and it is signed by N. D. Eastman, Secretary of The North Fraser Harbour Commissioners, and reads as follows:

Re Bill S-38 while this bill contemplates that commissions will not be brought under it at present without the concurrence of the majority of commissioners we are of the opinion that it paves the way for an amendment of section thirty at some future date bringing all commissions under the bill. Our specific objections are:

1. Section four would permit a change of boundaries of the North Fraser by Order in Council.

2. Section eight would produce in effect a wage freeze by requiring ministerial consent to the fixing of the salary for the chief executive officer of the commission.

3. Section ten would restrict powers presently held by North Fraser as to acquisition of land.

4. Section fifteen would in effect turn the commission into a taxing body for the dominion Government and contains inherent danger that once implemented there would be pressure on commissions to raise larger revenues, they would then become part of the general federal tax structure. North Fraser would be willing to send a representative to appear before any further hearing of the Senate committee of this bill if the Senate wishes them to be heard.

STANDING COMMITTEE

I have a further telegram, signed by the secretary of the Winnipeg and St. Boniface Harbour Commissioners, addressed to the Chief of Senate Committees, Ottawa:

Reply your telegrams Mayor Guay and Winnipeg and St. Boniface Harbour Commissioners re consideration of Bill S-38 at 10.30 a.m. Tuesday, December seventeenth. Commissioners Mayors Guay, Kushner and Alderman Claydon will be in Ottawa that day with delegation to meet with Prime Minister at 10.00 a.m. re TCA stop Request hearing before Senate Committee on Transportation and Communication 1.30 p.m. December seventeenth next.

Then there is a further telegram from Victor K. Copps, Mayor of the City of Hamilton, to the Chief of Senate Committees:

Propose to attend meeting of Senate Committee on Transportation and Communications Tuesday, December 17, 10.30 a.m. to press for exclusion of the Hamilton Harbour Commissioners Act from the schedule of Bill S-38.

Those are the only telegrams that have been handed to me, honourable senators. I wonder if before we proceed we should not ask the clerk to tell us who was given notice of our meeting pursuant to the instructions we gave the last time. Perhaps you would tell us?

The CLERK OF THE COMMITTEE: It is in the minutes. To every mayor—

The ACTING CHAIRMAN: —of every municipality that adjoins a harbour run by a harbour commission mentioned in the schedule, and to every harbour commission mentioned in the schedule, with the exception of the great city of Toronto. Is that satisfactory?

Some SENATORS: Agreed.

The ACTING CHAIRMAN: Is it agreed the committee officials have complied with our direction?

Some Hon. SENATORS: Agreed.

Senator ROEBUCK: Just before we go on with our regular schedule, I was in Baltimore, Ontario, over the weekend and I saw the Mayor of Coburg, Mr. Jack A. Heenan, and also the Reeve of Northumberland County, Mr. W. I. Thomas. The Coburg representatives and also the reeve were intending to drive last night to be before us today but they were advised that the bill would not go through this session, and so they left off their representations, whether wisely or unwisely I don't know, until the bill comes before us again next session.

Their great objection to the bill as it stands is the fact that the city or town of Coburg has invested some \$500,000 in their harbour. They feel that if this bill goes through there should be some amendment to that provision in the bill that makes the net proceeds of the harbour payable exclusively to the Receiver General of Canada. They feel that they should be paid proportionately to their investment as compared with the department's investment.

Senator McCUTCHEON: Did they tell you what the department's investment was?

Senator ROEBUCK: No, and it is going to be high. But if the department's investment is one million dollars, and theirs is one, and I think they are perfectly sound in this, they should have a division of the revenue in the proportion of \$1 to a million, or whatever it may be, whenever there is such a revenue arising.

But I didn't come here with the idea of pleading their case. However, I do want it on record that the Town of Coburg has an objection—they are not on the list in the schedule. They are, no doubt, like many other harbours, and this question of the division of revenue will arise I suppose in nearly

every one of them. It may be deferred for some time; it may be some time before they have revenues, but when it does come, and there is a division of revenue, this matter will be a very hot one. In the meantime, Mr. Chairman, I would like to point out that if this bill stands as it is now written and all the revenue from the harbour goes to the Receiver General of Canada there will be mighty little investment by municipalities in their harbours, until that bit of accounting is properly, honestly, decently and soundly arranged.

Senator LAMBERT: Is Coburg now under the act?

Senator ROEBUCK: No, but it could be brought under this act without their consent and without any negotiations.

Senator MOLSON: I wonder if we are talking about revenues here or about surpluses. Would municipalities in any of these harbours which don't pay want to share their losses with the federal Government? I think we are mixing revenue with surpluses here.

The ACTING CHAIRMAN: Senator Molson, would you like to hold that question until we call the departmental witness, and you can ask him at that time.

Have any members of the committee a preliminary statement to make before we call the witnesses? If not, I would like to ask the people here to introduce themselves. I know we have the mayor and the city solicitor of Hamilton here this morning. I believe we have the city solicitor from Oshawa and also the Mayor of Oshawa. Perhaps we can get these gentlemen to introduce themselves.

MR. VICTOR K. COPPS: Victor Copps, Mayor of Hamilton, and Mr. A. Foster Rodger, city solicitor.

MR. LYMAN A. GIFFORD: L. A. Gifford, Mayor of Oshawa, Mr. E. G. McNeely, city solicitor, and Mr. F. C. Malloy, chairman of the harbour commission.

The ACTING CHAIRMAN: Any other delegations? Then, honourable senators, we also have Mr. Stead, assistant deputy minister, and Mr. Fortier, the general counsel to the Department of Transport, and Mr. Cavey.

Senator CROLL: Perhaps it should be mentioned that Mr. Fisher and Mr. Badanai are here from the Lakehead, and I think they just want to hear that this does not apply to them.

The ACTING CHAIRMAN: We have here Mr. Badanai, and Mr. Fisher, members of Parliament from the Lakehead, who are also representing Port Arthur and Fort William.

Senator CROLL: They want a statement of the position that this bill in no way affects them.

The ACTING CHAIRMAN: Perhaps we can ask Mr. Stead to do that.

MR. G. W. STEAD, Assistant Deputy Minister, Marine Section, Department of Transport: I only saw a copy of this wire half an hour ago. My staff have looked into the matter, and here again we are plagued by the time factor, trying to find out what the problem was here. I am informed that the last time I spoke of telephone conversations I got into difficulty, and so I am saying now what I have to say with appropriate caution.

My information is that this is a legal technicality about the territorial boundaries of the harbour, and I am told that both Port Arthur and Fort William have no objections to the bill itself. In other words, it is a specific problem relating to boundaries which, while we do not know what the technicalities are, they seem to be living with it since the Lakehead commission was set up three or four years ago. Beyond that I cannot comment.

With respect to Senator Croll's point, we have no urgent necessity that I am aware of to apply any such bill as the one being considered here to the Lakehead. Indeed the Lakehead is one of the more modern bills from which the present bill was developed. And there are very small differences, and I think at least in one or two instances the new bill represents an improvement and gives more flexibility and independence to the commission which is the purpose in mind here. I am afraid that is all I can say.

Senator LAMBERT: Regarding the point of jurisdiction, I had the privilege of introducing a bill in the Senate last year pertaining to all harbours that came within the purview of the Government and Province of Ontario, along the shores of the lakes, and elsewhere in the province. This dealt with responsibility for defining the areas having regard of course to the federal constitutional right with regard to the foreshore of the lakes, and rivers on which these are located. But as far as the definition of property identified with these harbours, at that time that was the responsibility of the provincial government.

Mr. STEAD: I think the bill you are referring to related to the Ontario harbours agreement. It is related to Ontario only. We have had others such as British Columbia in the past. This is parallel legislation, as passed by the Ontario Legislature which enters into an agreement to cover the sovereign rights. That is to say, the power to give title in harbours arose out of the particular wording of the British North America Act which gave harbours, as of 1867, to the federal Government. You run into property problems as to which authority is entitled to give title, and the purpose of that bill was merely to state that that was a property problem.

Senator LAMBERT: Would not that relate to the situation which arose—

Mr. STEAD: No, sir. There is no relation between the two.

The ACTING CHAIRMAN: Honourable senators, what is your pleasure? Do you wish to hear Mayor Victor K. Copps of Hamilton and also Mr. Rodger, the city solicitor?

Hon. SENATORS: Agreed.

HIS WORSHIP MAYOR VICTOR K. COPPS, Corporation of the City of Hamilton:

Mr. Chairman and honourable senators, we are very grateful for this opportunity of making a further submission on behalf of the City of Hamilton, and we request that the committee give consideration to Hamilton's being excluded from this legislation. We were here on October 30 and made a submission which was very similar to that made by the late Mayor Summerville of Toronto, because we felt that our case was very similar to Toronto's case. We were surprised, and somewhat disappointed, when the committee saw fit to exclude Toronto from the legislation but not to exclude Hamilton.

Senator ROEBUCK: The committee did not do that. The proposed amendments did it, and the amendments were proposed by the Department.

Mayor COPPS: We saw that action was taken to exclude Toronto but not Hamilton. It may have been to some extent because of the telephone conversation that Mr. Stead mentions in which there seems to have been a misunderstanding as between him and myself as to what my feelings were about some of the amendments that are proposed.

Those of you who were here at the meeting of October 30 will remember that we mentioned the diversity of operations of the Hamilton Harbour Commissioners, and that they were very similar to those of the group in Toronto. I understand one of the reasons why Toronto was excluded was because the commissioners there were involved in a number of businesses not exactly the harbour business, such as the airport and the baseball stadium, and so on. Likewise in Hamilton the harbour commissioners under the existing setup

have been in various other operations, such as leasing office space, recreation, amusements, and various other businesses, and we think that on that basis certainly our case is very similar to that of Toronto.

We feel that we have more to fear from being included in this legislation than Toronto has because of the fact that we have a minority of city council representation on the commissioners. At the present the Hamilton harbour commission is made up of one city council appointee and two members appointed by the Governor in Council, whereas Toronto has three city-appointed members and two appointed by the Governor in Council. This means, of course, that under section 30 of this legislation it would be possible for the two members of our commission to repeal the statute of 1912 passed by the Parliament of Canada under which the harbour commission was formed.

Our harbour has developed very well under the present system. I went into that in quite a bit of detail the last time. I mentioned the expansion that has taken place in the harbour, and the fact that the city has a very large stake in the harbour, and has contributed a lot of land towards harbour development. Work done by the harbour commissioners has brought about a great expansion in the harbour. We handle over 8 million tons of cargo annually, which is almost double the tonnage handled by Toronto. Our overseas tonnage has increased in the last five years from 38,000 tons to almost 700,000 tons, and we feel that under the present setup the commissioners have done a good job. The city also has done a good job. We do not want this change. The future will be unknown, and we respectfully request that you consider our appeal that Hamilton be excluded from the schedule of this bill.

The ACTING CHAIRMAN: Thank you very much, Mayor Cops.

Senator ROEBUCK: Would you tell us what extramural—if I may use that word—activities the harbour commission of Hamilton engages in?

Mayor COPPS: They maintain an office building in which they rent space to all types of businesses, senator. They also lease property for the operation of a large community swimming pool, and also lease another section of property for the operation of an amusement park.

The ACTING CHAIRMAN: Are there any other questions?

Senator LAMBERT: With respect to the industrial areas, do they come under the control of the city council?

Mayor COPPS: The zoning, senator?

Senator LAMBERT: I was thinking of the industrial area down where the steel plants are. There is a good deal of vacant land down there that has been reserved for future development. Does the harbour commission and the city co-operate in . . .

Mayor COPPS: Yes, this is one of the reasons why we are concerned about the possibility of any change. There is the fact that the city and the harbour commission and the industries have co-operated for the mutual benefit of everybody concerned, and we are afraid that any change in the setup might endanger this co-operation. We are particularly anxious that some decision be made soon so that we will know whether this co-operation can continue on the basis that it has for the past 50 years.

No doubt the members of the committee have read in the papers that the Studebaker Corporation is going to begin its world-wide production of automobiles in Hamilton soon. This is the first time this has happened with respect to anybody in the automotive industry. We have many similar developments that have come along and that have been fostered by the co-operation there has been between the city council and the harbour commission. We

would not like to leave the future up in the air and not be able to encourage the same kind of development, which is the situation while this bill is in the mill, and there is a possibility that Hamilton might not be excluded.

Senator LAMBERT: The land on which these industries are located, and where the Studebaker plant may locate, is the property of the city?

Mayor COPPS: No.

Senator LAMBERT: It is private property?

Mayor COPPS: Studebaker has a plant in which they are going to double the staff immediately in order to increase production. They own about four other acres of land on which we hope they will expand if the manufacture of their cars in Canada is successful.

Senator LAMBERT: Is the land on which the National Car Company and the Dominion Foundries are private property? Did those companies buy those properties?

Mayor COPPS: They have bought them because of the good relationship that there has been between the city council and the harbour commission. They have acquired a great many water lots over the past number of years which they are filling in and reclaiming in order to be able to expand their operations along the bay front.

Senator LAMBERT: The development there has been largely a matter of private enterprise on the part of those corporations?

Mayor COPPS: Yes.

Senator LAMBERT: That is what I wanted to get at.

Senator ROEBUCK: May I ask you this question? You told us at the last meeting that the net revenue of the harbour commission is payable to the city treasurer, and you have observed that under this act the net revenue becomes payable to the Receiver General of Canada. Have you any comments to make with regard to that?

Mayor COPPS: I did not develop that any further at this appearance because I did point out the last time, senator, that the city had turned a lot of land over to the harbour commission and the city felt it had an investment of many millions of dollars in this land, and also that the harbour commission under the present setup turned over and sold these water lots to the industries to enable them to expand. As you point out, we have the power under the existing setup to ask that the profits be turned over each year to the corporation of the City of Hamilton. We have not done this because the funds have been used for the development of the harbour and the development of the industries. As you pointed out, prior to my being called this would cause the Corporation to take a long look at investing anything further in the harbour if the profits were to be turned over annually to the federal Government, rather than being available for our use should we see fit to call upon the harbour commission to turn the profits over to the corporation.

Senator ROEBUCK: Would you be satisfied if it was arranged that the profits be divided in proportion to the amount of the investment of the two parties?

Mayor COPPS: I think I would prefer to say that we like it the way it is. It has worked out very well, and we would be afraid of making any change.

Senator ROEBUCK: You want all the profits?

Senator CROLL: No, he did not say that.

Senator ROEBUCK: The present act provides that any net profits shall be paid to the city treasury. You would like to keep it that way?

Mayor COPPS: I imagine that if given the choice of keeping all or turning 50 per cent over to the federal Government all of us would answer the same way: we would rather leave it the way it is.

Senator MACDONALD (Brantford): Mr. Mayor, could you explain a little more fully why you feel the amended bill is not as good for you as the present one? The amendment proposes there would continue to be two commissioners appointed by the federal Government and one by the city, but the amended bill goes further and says that a change cannot take place whereby the federal Government takes over the administration of the harbour without giving you notice of a by-law to that effect. Under the present act, as I understand it, the majority members of the commission who are appointed by the federal Government could do that now without giving you notice.

Mayor COPPS: I do not think that under the present bill they could vote themselves out of existence in their present form and under the new legislation. The way I understand Bill S-38, those two federal appointees could repeal the act of 1912 under which the Board of Commissioners was formed and put themselves under this legislation. The only effect of the amendment, as I understand it, is that we would be given some notice this was going to happen and would be given an opportunity to come up here and perhaps protest. But that is really nothing effective whereby, as I see it, we could prevent it.

Senator MACDONALD (Brantford): I do not see you are in any worse position under the new, amended bill, than you are at the present time.

Mayor COPPS: I think probably I could summarize our feelings about that. We feel there have been differences of views on different questions between the commissioners and the city council, but over the period since 1912, when the Board of Commissioners was set up, there has been a lot of progress made. The harbour has developed and our industries have developed, and there are so many unknown factors about new legislation that we do not want to say, "We will change it, in the hope the new legislation will work out the way we would like it to." I suppose that a bird in the hand may be worth two in the bush, but we feel we would be foolish to change now what has worked out very well in the hope that the new legislation would enable us to carry on in the same way.

Senator GROSART: Mr. Mayor, is not the present situation that you are under the act of Parliament and your harbour commission cannot change that in any way?

Mayor COPPS: That is my understanding of it, senator.

Senator GROSART: You have much greater protection at the moment than you would have under the bill, even as amended.

Mayor COPPS: Yes, we think so, sir.

There is one other feature of the legislation we are a bit concerned about, Mr. Chairman. Under section 5, I believe it is, there is a possibility that an adjoining municipality might be involved in selecting our nominee to the commission. There is an annexation application before the Ontario Municipal Board now by Burlington, one of our adjoining municipalities, to acquire quite a bit of lakefront property presently belonging to Hamilton. As we see this, if the application is granted Burlington could then make a strong claim under this legislation to be entitled to have a voice in the appointment of our nominee to the commission without the great investment we have made in the harbour over the years. Because this may happen, again we are afraid of the ramifications and complications of the legislation, particularly in view of the fact we think we have been successful and have had a good operation under the present legislation.

The ACTING CHAIRMAN: Are there any other questions to be asked of Mayor Copps?

Senator MOLSON: May I ask what the history of the harbour has been in recent years as regards revenue? Has the harbour actually operated at a profit, or has it had deficits? What has been the situation?

Mayor COPPS: According to the summarized statement of operations, the total revenue of the commission for 1962 exceeded \$1,200,000, and a net profit in excess of \$63,000 was transferred to surplus. After making provision for accumulated depreciation in excess of \$16,400,000 their balance sheet shows an accumulated surplus, as at the end of 1962, exceeding \$15,600,000.

Senator ROEBUCK: That has all been plowed back, has it? It has not been paid to the city treasury?

Mayor COPPS: No, the city has never acted on that part to require the profits to be turned over to the corporation.

Senator MOLSON: It has been re-invested in harbour facilities.

The ACTING CHAIRMAN: Do you know to what extent it has been re-invested?

Mayor COPPS: No, but I could read you an extract from my earlier submission about our investment in the harbour, Mr. Chairman.

The ACTING CHAIRMAN: No, I was thinking about the surplus shown on the books.

Senator ROEBUCK: You know that no money has been paid to the treasury, so that all the money has been re-invested or is in the hands of the harbour commission—am I not right?

Mayor COPPS: Yes.

Senator PATERSON: Would not that be the only harbour in Canada that made a profit?

The ACTING CHAIRMAN: I do not know this witness can answer that. Can you, Mayor Copps?

Mayor COPPS: No, I do not know that.

Senator ROEBUCK: I know it is not so.

Senator LAMBERT: Is there much dredging done in the harbour there?

Mayor COPPS: Yes, a great deal is going on all the time.

Senator LAMBERT: Is that done by the Department of Public Works? Is that taken into consideration in their operations?

Mayor COPPS: It certainly is, in the harbour operations by the commissioners.

Senator LAMBERT: That would be included in this statement or part of it?

Mayor COPPS: I think it would be in the statement of their financial operations.

The ACTING CHAIRMAN: Are there any other questions of Mayor Copps?

Mayor COPPS: We think, Mr. Chairman, to conclude, that our situation is identical to that of Toronto; and we feel that on the basis of Toronto having been excluded, in all fairness and justice to the city of Hamilton we would like the committee to consider excluding Hamilton as well.

The ACTING CHAIRMAN: Mayor Copps, do you want Mr. Rodger to add anything, or does he have anything to add?

MR. A. FOSTER RODGER, Solicitor for the City of Hamilton: No, Mr. Chairman, but I am prepared to answer any questions.

The ACTING CHAIRMAN: Thank you.

Senator MACDONALD (*Brantford*): I notice Mr. Munro, Member of Parliament for Hamilton East, is here. I do not know whether he wants to say anything.

Mr. JOHN MUNRO, M.P. (*Hamilton East*): No, I do not have anything to add.

Senator MACDONALD (*Brantford*): I just think it should be recorded that he is present.

The ACTING CHAIRMAN: Certainly.

Do you desire at the present time to hear Mr. Stead on the statements made by the mayor, or shall we proceed to the Oshawa situation?

Senator ROEBUCK: Let us hear from Oshawa.

The ACTING CHAIRMAN: We have Mayor Gifford from Oshawa present, Mr. E. G. McNeely, the city solicitor, and Mr. F. C. Malloy, the chairman of the Oshawa Harbour Commission.

HIS WORSHIP MAYOR L. A. GIFFORD, Corporation of the City of Oshawa: Mr. Chairman, honourable gentlemen, I might say that we are not coming here this morning in any belligerent mood, trying to break down in any way the thinking of the department in as much as it might think this bill is a step forward. I believe their intent is good, but we feel justified in coming here—our city solicitor at the previous committee hearing, and we joining with him this morning in a similar way.

We appreciate your Senate committee has seen its way clear—or through the department—to amend certain sections of the new bill, and we are very grateful for that. However, we feel that there is great danger yet in the bill, that there is more that could be added that we feel we are entitled to because we have some 50-odd acres adjoining the Oshawa harbour, and it is not turned over in deed but the city council has turned it over, for management purposes, to the Oshawa Harbour Commission.

May I say there, in mentioning Oshawa Harbour Commission, that the relationship between our city council and the harbour commission has been most cordial, as have been those of the city and the Department of Transport. We feel there are parts of the bill which we would like to see amended because of our land being under the jurisdiction of the harbour commission, and we also feel that the inspection of the books should be open to the City of Oshawa. Furthermore we feel that consent should be obtained from the City of Oshawa before this bill is put into effect, that is from the municipality, before it is put into operation. It is our view that we are all in here together. Nowadays we hear much about unity and the fact that we must work together. I want to assure you that is what we are here for. We are not dog-in-the-manger types wanting something different from other municipalities. We are not even here to ask to be withdrawn from the bill because we feel that it has good merits.

I have heard a lot this morning about finances, but let me point out in fairness to the harbour commission that I feel that under the bill the harbour commission has something to gain. I say that, because they can enjoy a better portion of the money being earned by local commissions, which was to be held, as was suggested by Senator Molson, and to be put back for further development and reconstruction of the harbour. It has its good points. Who would not want to come here this morning in the best interests of his community? We trust you will look at it again in that light.

The bill, and I can see evidence of the department's point of view in this, is not a yardstick to apply differently in different parts of the country. For instance they may have a certain policy in the bill as applied to British Columbia, while that same part may not apply in any way to Hamilton or Oshawa. I don't think it can properly be used as a yardstick. I feel that we don't want to break it

down, and have one part for here and another part for our place. I mention that from the point of view of the City of Oshawa and what is developing between Oshawa and Whitby. Of course Whitby does not have a harbour. And also what is likely to develop between Oshawa and Bowmanville. There could be two or three harbours east and west of Oshawa on the north shore of Lake Ontario. It may not happen in our time. But that is the situation. I would ask you to look at this from a long-term view. Because I still am very insistent that you amend the act whereby we have the inspection of the books, and the consent of the municipalities before we can go into this bill.

As I said before we are here in the spirit of co-operation, and we are not here to say the bill should be withdrawn. We feel that there is always good in some man whether you like him or not, and I say this applies to the bill as well.

We ask you seriously to consider the points we want to be amended in that bill. I would appreciate if you would allow our city solicitor to say a few words on that point.

The ACTING CHAIRMAN: Before you go, Mayor Gifford, are there any questions members would like to ask of the mayor?

Senator ROEBUCK: Mr. Gifford, what about this division of revenue which seems to be to my mind a large question. Perhaps I am something of an accountant in this. You say you have invested 50-55 acres at what your solicitor said he valued at \$250,000. That is not millions, but it is a sizeable amount. Now what is the arrangement about that? Have you given that to the department or do you have any interest in it still? Do you think you should draw some revenue from it if revenue is available?

Mayor GIFFORD: No, we have turned over this land for operational purposes, but no deed has ever been given to the harbour commission. They in turn rent this land out, and they in turn draw the revenue from the land. How soon that land may be deeded out, I don't know. When this bill was set up, and I was mayor of the city at that time, and I remember coming to Ottawa and submitting to the department that it would be best for the harbour commission to have a certain jurisdiction within a certain distance of the harbour. That is how it was we turned it over.

Senator ROEBUCK: So far as revenue is concerned, you say the harbour commission rents out land to private individuals?

Mayor GIFFORD: Yes, especially to coal companies.

Senator ROEBUCK: And the rent, where does the rent go, to the Receiver General?

Mayor GIFFORD: Now you are getting into the mechanics of the thing. I would appreciate it if the senator would hold that question and put it to the harbour chairman. But under the new bill, as I understand it, harbour commissions will enjoy more revenue, and have under their jurisdiction more revenue than they have under their control at present.

Senator ROEBUCK: You notice the net revenue is payable to the Receiver General, not the municipality.

Mayor GIFFORD: I realize that, but we have great confidence, no matter which government is in power,—in the Receiver General.

The ACTING CHAIRMAN: Is it the desire of the committee to hear Mr. McNeely, the city solicitor?

Some Hon. SENATORS: Agreed.

MR. E. G. MCNEELY, City Solicitor, City of Oshawa: Mr. Chairman, honourable senators, I think the mayor has expressed the points the city still feels should be considered by this committee. Originally when we appeared here we asked

that there be four changes made in the bill. We asked that the act be amended so that if there is a municipality it should be entitled to have a right of representation. I think that was a very substantial amendment, and the department in its proposed amendments has agreed to that, and I think that is a great improvement.

The second thing we asked for was that the rights which the commission had to receive notice of by-laws to be enacted be retained in the new act. Now they have to give ten day's notice to municipalities, who have that opportunity of expressing their views before any by-laws affecting their interests come into force.

Senator ROEBUCK: But that is not a real protection.

Mr. MCNEELY: It is better than it was formerly, and it parallels the protection in the present act.

Senator ROEBUCK: There is no doubt it was prudent.

Mr. MCNEELY: The other two matters we are asking to be considered are the right of inspection of the books as well as the financial records of the commission. As has been pointed out the practice in recent years has been that these private acts have been passed in individual cases, in a form which meets with the approval of the Department of Transport. And in all of these recent acts the reason is given that the municipalities, because of the practice of turning over property, have become financially involved in these commissions, and so they have the right to inspect the books of the commission. That right is all the more important because in the Oshawa case, as in most cases, we are a minority on that commission, which is as it should be. I submit that there is no reasonable ground to be advanced that a right which has been recognized as reasonable in all these private acts, and which the department has admitted is a right which they cherish—there is no reason why these rights should be denied them in their relationship to the commission. I submit that there is no good reason that that right should not be in this general act.

That is one point. The other point is that the city feels that the analogy that has been drawn repeatedly in the discussions of a partnership between the city and the harbour commission is an apt one. It has been said that this is a co-operative enterprise. A successful harbour depends in effect upon that partnership. If that is so, who are the partners? The partners are surely not the federal Government and the harbour commission. If you have partners, or if that analogy is correct in any substantial way, surely the partners are the federal Government and the municipality, and the commission as set up is an expression or creation of that partnership. So, if you are talking about changing the rules under which the commission is going to operate, and under which the harbour is going to function, and if the federal Government recognizes, as it does in this act, that it should not simply do this on its own but that it should seek the consent of someone, then, surely, the person who has perhaps the most right to grant or withhold consent is the other partner, the municipality, even more than the harbour commission, which is really a creation of the partnership, or an expression of it, and which in some cases, and in our case, is, in effect and in the final analysis, subject to the control of the department.

I have spoken, gentlemen, at a little greater length than I intended to speak in view of the presentation of our mayor, but I wanted to make clear that while we recognize the objectives of this bill, and while we think that in the main it is a good bill, we do think as it applies to us we have four objections to it. You have gone a considerable distance in meeting them. You have met two of our objections, but we still feel that these other views deserve further consideration.

Senator ROEBUCK: Can you answer the question I put to the mayor and which he referred to you?

Senator CROLL: No, he referred it to Mr. Malloy.

Senator ROEBUCK: Then, we will hear from him.

Mr. MCNEELY: I think I could answer that if you wish me to.

Senator ROEBUCK: Go ahead, then.

Mr. MCNEELY: I think Oshawa's act is not identical with Hamilton's in that respect. Most of these private acts do provide that the net revenue be turned over to the receiver general, and our is in that position. Hamilton's act provides that the net revenue is to be turned over to the municipality.

Senator LAMBERT: The same as Toronto's.

Mr. MCNEELY: I am not sure if that deals with your point, but that is the case.

Senator MOLSON: Has there been a surplus in the operation of the commission at Oshawa?

Mr. MCNEELY: I think that that is a question I should leave to the Chairman of the Harbour Commission.

Senator LAMBERT: How long has it been in existence?

Mr. MCNEELY: Three years.

The ACTING CHAIRMAN: It was incorporated in 1960, was it not?

Mr. MCNEELY: That is right.

The ACTING CHAIRMAN: Are there any other questions of Mr. McNeely? Thank you, Mr. McNeely. Does the committee wish to hear Mr. Malloy, the chairman of the harbour commission?

Senator ROEBUCK: I do, yes.

The ACTING CHAIRMAN: You are the chairman of the Oshawa Harbour Commission, Mr. Malloy?

MR. FRED MALLOY, Chairman, Oshawa Harbour Commission: Yes.

The ACTING CHAIRMAN: Do you desire to make any statement on your own?

Mr. MALLOY: Yes, sir, I do.

The ACTING CHAIRMAN: Go ahead.

Mr. MALLOY: Mr. Chairman, honourable senators, and representatives of the Department of Transport—I do not want to leave them out because they are my friends. Gentlemen, I may be presenting a different side of the picture from that presented by the city. My presentation will be only with respect to the situation as it might affect the Oshawa Harbour Commission and not necessarily the city.

I feel that Bill S-38 has a lot of merit. It is much the same as the Oshawa Harbour Commissioners' Act. In fact, I believe that a great deal of it is word for word. I would also point out that we of the Oshawa Harbour Commission have had the most favourable relationships with the various members of the Department of Transport with whom we dealt. They have given us great assistance in getting a small harbour commission started from nothing, and raising it to what I think is, after listening to figures quoted here, quite a profitable operation.

When the Oshawa Harbour Commission was suggested for consideration and establishment three years ago there was a considerable shortage of land. The Crown land was a very minor part of that required to operate a harbour.

The city came to our rescue at the commencement, and later on in a second instance, and made available some 55 acres of land which was amongst their most choice industrial land.

Senator McCUTCHEON: Did they give it to you, or did they lease it to you?

Mr. MALLOY: No, they loaned it. They placed it under the administration of the Oshawa Harbour Commission for it to administer, and to enjoy the revenues therefrom, and to use it in any commercial manner in which they saw fit. However, the city did retain the deed. They own the land. There is no term on this loan, but it has been considered that it will go on *ad infinitum*.

Senator ROEBUCK: That is, you still own the cow but the other fellow milks it.

Mr. MALLOY: No, it should be put the other way. We milk it. The commission enjoys the revenue. As a matter of fact, the city does not even charge us property taxes.

Most of this land is in use. In fact, a good part of it is leased to General Motors, and we have some high hopes of gaining some further revenue from General Motors.

Senator McCUTCHEON: But the city will send a tax bill to General Motors.

Mr. MALLOY: Not with respect to this land that we lease at the present time.

Senator CROLL: It is city-owned land not subject to tax.

Mr. MALLOY: It is owned by the city and is under the administration of the harbour commission and is not taxed today. It is a pretty good arrangement for the harbour commission.

To continue, we on the harbour commission have some apprehension with respect to the procedures in sections 30 and 5 of Bill S-38, in that if these sections were ever brought to bear to make a change in the status of the harbour commission we fear that the city might lose its right to appoint a representative on the harbour commission.

Senator McCUTCHEON: The witness has not seen the amendment.

The ACTING CHAIRMAN: I think that that is perhaps so.

Mr. MALLOY: We feel that the city should not lose its right to appoint a member of the harbour commission. It quite likely would take back this land. And in that event there would not be sufficient land to operate a harbour properly.

We have some apprehensions in this regard, and we would ask that you, in your wisdom, consider whether there is the possibility that the City of Oshawa under Bill S-38 could ever lose its right to appoint one representative to this commission. If that is the case we would suggest that it might be wise to drop the name of the Oshawa Harbour Commission from Bill S-38. I believe the honourable senator had some questions with respect to finances, and I am prepared to answer them.

Senator ROEBUCK: My question was simply with respect to the city-owned land. The city has put in land valued at \$250,000. Am I right, now; I sometimes mix up these figures? I want to know whether you thought it was just that the net revenue from that should be payable to the receiver general rather than to the municipality?

Mr. MALLOY: The net revenue presently is payable to the receiver general, but this is a privilege that has never been availed.

Senator ROEBUCK: But you notice that in the new bill any net revenue from the harbour will be payable to the receiver general?

Mr. MALLOY: Yes, sir.

Senator McCUTCHEON: That is the same as in the present bill.

An hon. SENATOR: There is no change.

Senator ROEBUCK: Whether it is a change or not, I want to know whether you think that is a just arrangement as between the municipality and the Crown.

Mr. MALLOY: Under the present arrangement we have been advised to borrow money from the bank, which we are doing, and to further the capital work on the harbour which we are doing and use our revenues to pay back this money. It appears that this arrangement, under our act, can go on. It is a highly successful arrangement, and our revenues are continually plowed back into further capital assets of the harbour, and also all of the revenues arising from the land which is loaned to us by the city of Oshawa.

Senator McCUTCHEON: You have never paid any revenue to the Receiver General?

Mr. MALLOY: No.

Senator ROEBUCK: Do you anticipate that will continue forever, or will there come a time when you have plowed back this money and there will be revenue derivable from it?

Mr. MALLOY: I think the time might come when there would be surplus revenue.

Senator ROEBUCK: When that time does arrive and there is a surplus revenue, do you think it should all go to the Crown, or should there be a fair division as between the Crown and the municipality in proportion to the amount of their investment?

Mr. MALLOY: I feel there should be a fair division between the Crown and the municipality in proportion to their investment.

Senator ROEBUCK: So do I.

Senator MOLSON: May I ask the witness, has the harbour commission operated at a profit to date?

Mr. MALLOY: The harbour commission operated at a very small profit in the first year, in the second year a somewhat larger profit, and last year I believe the net profit was in the neighbourhood of \$30,000. On all of this there has been no depreciation.

Senator MOLSON: There has been no depreciation?

Mr. MALLOY: There is no depreciation on the capital investment which was made by the Crown through the Department of Transport.

Senator MOLSON: Have any works been carried out by the Department of Public Works which the harbour commission has not had to pay for?

Mr. MALLOY: Yes.

Senator MOLSON: Such as dredging?

Mr. MALLOY: Yes, very substantial.

Senator MOLSON: Very substantial?

Mr. MALLOY: Yes.

The ACTING CHAIRMAN: How substantial?

Mr. MALLOY: In the neighbourhood of $\frac{1}{2}$ million.

Senator McCUTCHEON: We had that figure before from the department. I do not think there was any figure as low as $\frac{1}{2}$ million. Maybe there was.

Mr. MALLOY: I believe the senator said "recent".

Senator McCUTCHEON: Oh?

The ACTING CHAIRMAN: Are there any other questions of Mr. Malloy?

Thank you very much indeed, Mr. Malloy.

Mr. MALLOY: If I might just add one point while I am here: Our apprehension in this regard in no way stems from our present relationship with the parties in the Department of Transport who are administering our harbour through us; but it arises from the possibility that at a later date faces may change, and that relationship might become different.

Senator HOLLETT: How are you appointed on the commission—by the municipal council?

Mr. MALLOY: One member is appointed by the municipality, and two others by the Crown, sir.

Senator GROSART: As the chairman of the harbour commission, would you think the commission would be happier if there was a change in your status, to bring you under this proposed act—would you be happier if that was done with the consent of the municipality?

Mr. MALLOY: The new act and the old act, Senator Grosart are so similar, except for this one difference which I have outlined, and also the enhancement of being able always to keep our revenues to plow back into further development of the harbour. I think we would be better satisfied under Bill S-38 provided the city were continually assured of being able to appoint one member.

Senator GROSART: Regardless of what change would be made, would you think it is advisable to have the consent of the municipality?

Mr. MALLOY: Yes, I feel the municipality's consent should be sought, or else the name of the Oshawa Harbour Commission dropped from the bill.

The ACTING CHAIRMAN: That is not the question.

Senator McCUTCHEON: Well he said it, and that is all.

The ACTING CHAIRMAN: Thank you very much, Mr. Malloy.

Now, gentlemen, do you desire to hear Mr. Stead at this time on these two matters? I should say to the committee that we had these telegrams read into the record at the beginning, and we may have to have Mr. Stead deal with them as well. Shall we hear Mr. Stead now? What is your pleasure?

Senator CROLL: Let us hear Mr. Stead.

The ACTING CHAIRMAN: First to deal with the Hamilton situation and then the Oshawa situation.

Mr. STEAD: Thank you, Mr. Chairman.

Honourable senators, I wonder if I could first say that one of the difficulties that has beset us here is that, as you know, it is quite properly out of the question for us to discuss a bill of this sort before it is tabled and, therefore, there has not been the opportunity for advance consultation which might have eliminated some of these difficulties that we have been dealing with here.

I have the impression some of the worries about this bill are merely because of the time factor, because of which they have not felt fully confident they knew what they were getting into, rather than that there have been any specific objections to the bill itself. The substantive clauses, by and large, have not caused any complaints. So there is a time factor here which I think is material to your consideration of this bill.

To go about it in the order the chairman has suggested, I made a number of notes, and I hope to keep this in a fairly logical order so that all the points will eventually be covered. I would like to say at the outset I think it appropriate to remind the committee of the background of the financial arrangements, because this is germane to some of the specific points that have been raised, that when a harbour commission is formed it is customary for the city to dub

in its land adjacent to the harbour that ought to be retained for harbour development if it is to contribute to the growth of the community. So, that, in other words, it is not sold off to industries that have no relation to marine traffic, thereby blocking use of the harbour in the distant future for that purpose.

At the same time the federal Government dubs in its wharves, breakwaters and land, if any, it owns adjacent to the harbour. This is at the initiation of the commission. As a general rule for many years past, but not always—in the depression things were a little different, but for many years past I submit the city's obligation ends at the point where they put in their land. We do not expect to call upon the city for further cash assistance. They have already put in their land, and that is the end of their obligation. We do not feel—and I am sure you would agree—it is proper to ask that city revenues, which are assessed against property owners in the city, should go to things other than the normal municipal services—police protection, fire protection, roads, sewers, and so on. By the same token, harbour revenues should be plowed back into the harbour, as we have been hearing this morning.

I submit that while the city's obligation comes to an end normally when it has dubbed in its land and assisted in setting up the commission, the financial obligations of the federal Government are only beginning. I say that, because in the first place the facilities the federal Government have transferred, like the city's, are given free, if that is the proper word to use, to the new harbour commission for it to live on. As a general rule I think it is invariable throughout the world, and even in important ports with industrial complexes behind them, like Rotterdam, that the full costs of maintaining the harbour are not covered by revenues from that harbour. The result is that in the national interest the finances must be made up by the federal Government, which has prime responsibility for navigation and shipping under the British North America Act. That being the case—

The ACTING CHAIRMAN: You are talking too about the national harbours?

Mr. STEAD: While differently organized, the same principles apply to national harbours, yes, sir.

His Worship Mayor Copps raised the question about co-operation with industry. Indeed, the whole purpose and, in my personal view, the strength of the commission system we are talking about here is that there is a high degree of delegation of the responsibilities of the federal Government, under the British North America Act, to local authorities. Whereas two of the members of the commission, or a majority, are appointed by the federal Government, it has been the invariable practice—which we have no intention of changing—that the people appointed shall be local residents. The whole purpose of this was to bring local initiative and enthusiasm to bear.

This system has worked elsewhere. There are half a dozen acts very similar in all these respects to the one we are now considering, and as long as there is not some boob in the lease or the land disposal proposal that has to be concurred in by the Governor in Council, there is no reason why any significant delays should occur in regard to any one area. This is why we want to give independence to the commissions rather than running them directly.

Is there anything else in relation to Hamilton? I think, Mayor Copps, that covers, from my point of view at least, the points you raised. Would you wish me to go to some of the others?

The ACTING CHAIRMAN: I think it is better to deal specifically with the first point of the proposal the mayor suggests, namely that Hamilton should be excluded from the schedule. I think that is the question the committee has to deal with.

Senator CROLL: I cannot understand where you draw a distinction between Toronto and Hamilton. They are competitive ports. Hamilton is doing very well in its own way as compared to Toronto which is also doing very well. They have land, leases, they have involvements. Where is the distinction between those two as compared with all the others?

Mr. STEAD: Well, sir, the Toronto situation according to my information is quite different because of the magnitude of its problems in regard to the functions that the harbour commission is carrying out for the city. They are quite clearly non-harbour properties, back from the harbour, resulting from the filling-in of the original harbour many years ago. I would, perhaps, have preferred to leave it in the original schedule with the understanding we would not proceed under section 30. It was decided otherwise. I feel we should not go further in destroying, if you like, the national application of this bill wherever those concerned feel it is justified. I feel that there are improvements in this bill as compared with all the other acts now in effect, and I think when Hamilton has—I have faith that when Hamilton has more time to examine the implications they may well come to agree with us.

Senator CROLL: What you are saying in effect is that this bill really is not doing any thing to Hamilton that should not be done. Hamilton has not quite got the impact of it. Perhaps it would be wise at this stage to let the matter rest until February, and that would give them time to think about it, and it would give us time to think about it, and then perhaps Hamilton would have an opportunity to give it more consideration. Wouldn't that be an advantage to everyone?

Mr. STEAD: I think there is certainly a point there, Mr. Chairman. I would prefer, because of the requirements of this bill elsewhere, to see it acted upon, and with the schedule as amended. We have no particular designs on either of the harbour commissions that are here today, and I would be prepared to give an undertaking that a not unlimited but certainly a reasonable period of time would be granted to the city or cities concerned to think this matter over further before the department contemplated any action. We are not contemplating any action at the moment. There is no frantic urgency at the moment, and we have never thought we would rush out the day after this bill passed to bring everybody under it.

In the first place it is administratively impossible, and secondly unless there is some valid reason there is no crying rush for bringing the commissions listed under the bill. There is a time factor built into this thing, but the clauses which make this bill apply to existing harbours come only by order in council and I would submit, the time factor, if you share my faith, is better than in past bills, and gives better controls to cities who want better controls as well as to the federal Government, and the flexibility is a great improvement on anything that exists now.

The ACTING CHAIRMAN: Any other questions in respect of the Hamilton situation? If not will we have Mr. Stead deal with the Oshawa situation?

Mr. STEAD: There were two points I think made by the gentlemen from Oshawa. Perhaps the first one that I will deal with is the last one mentioned, which I think is the easier one. That is Mr. Malloy's concern about the city being excluded.

Senator MACDONALD (*Brantford*): The first point was that they thought the bill was a good one.

Mr. STEAD: I am glad somebody else said that because I might be regarded as a biased witness. However Mr. Malloy was concerned that the city might be excluded. There is no discretion in the Governor in Council to exclude a city where one exists. I can only refer the members of the committee to the amendments tabled here last time you met.

The ACTING CHAIRMAN: Perhaps I should say at this point that there has been printed up for the use of the committee a copy of the bill with the amendments passed at the last sitting, and if it is desired to have these distributed we could do so at this point.

Senator MCCUTCHEON: Which amendments were also passed by the Senate.

The ACTING CHAIRMAN: Do you desire to have a copy of the bill as amended?

Senator CROLL: Just a minute. Is somebody being a little quick here, or have I been snoozing a bit? This was referred back to the committee by the Senate indicating that our decision there was not a final decision since it was referred back for further consideration. In effect it has not been passed by the Senate, because the thing was referred right back and we are now where we started. I think that is the situation.

Senator MACDONALD (*Brantford*): I think the position is that the report of this committee recommending these amendments was adopted by the Senate.

Senator CROLL: But it is true it was referred back. What is the purpose of the reconsideration?

Senator HOLLETT: It was referred back to deal with the situation of Hamilton and Oshawa.

Senator CROLL: Whatever the reason we have it back again.

The ACTING CHAIRMAN: Could I just read what it says on the front of this reprint.

Reprint as amended by Standing Committee on Transport and Communications.

Senator ROEBUCK: We are not bound by that.

The ACTING CHAIRMAN: If it comes back to us for further amendment the committee is empowered to do so. Would you like to have this bill distributed?

Senator MACDONALD (*Brantford*): I think we shouldn't print this bill.

Senator ROEBUCK: I would like to have a copy of it.

Mr. STEAD: Dealing with the Oshawa point, I hope I have dealt successfully with the concern that the city might be excluded. The next point I have in my notes has to do with the matter of consent.

The ACTING CHAIRMAN: Consent by the municipality concerned.

Mr. STEAD: Yes, we have no concern about this where there is one municipality. But we have some concern where there are more than one. The department feels that there could be a case where there are several municipalities under present legislation that one of them could see fit to be obstructionist or to be difficult over a long period of time. There is some need for what you might call tie-breaking machinery to get the necessary reforms where these are indicated set in motion through the application of this bill without permission. This is the reason why we feel it would be unwise in all cases—this is a standard national act that we are contemplating—to require the consent of the municipality to federal legislation.

Senator ROEBUCK: This is not legislation. It is order in council.

Mr. STEAD: It has the effect of legislation, sir, in that it applies as act of Parliament to an existing situation, and repeals an act of Parliament in respect of that particular commission.

Senator ROEBUCK: It is a most extraordinary thing that we should repeal an act of Parliament by an order in council. I know it has been done, but it is most unusual and is not to be encouraged, in my view.

The ACTING CHAIRMAN: I suppose the effect is to repeal, but technically all it does is to suspend the original act and bring this one into effect. I do not suppose the original act is ever actually repealed on the statute books.

Senator CROLL: All it does is to put a provision in the new act for the giving of information on request. It is merely carrying out the new act in that fashion.

The ACTING CHAIRMAN: Are there any other points, Mr. Stead?

Mr. STEAD: The other point Oshawa raised has to do with audit, and there I would like to bring the committee back to my original statement about financing; that once the city has put in its property and the federal Government has done likewise almost the entire burden that cannot be carried by the self-generated revenues out of the harbour is federal, whether it is done through the commission or by sharing in the case of new projects which might be proposed and accepted by the federal Government. These revenues, you see, with the exception of the land part of them—the harbour revenues—were revenues that used to come into the Department of Transport through the harbourmasters and wharfingers before the commission was set up. They are federal revenues in the first place, and by far the predominant revenues of the harbours in most cases—there may be cases of which I am not aware—are in reality and basically federal Government revenues, and it seems that the audit power should rest with the federal Government, and all reasonable requests for information in these cases could be made available through the department. I would submit that it would be more appropriate to have a federal audit rather than a city audit.

The ACTING CHAIRMAN: Are there any other questions on this point in connection with the Oshawa case?

Senator GROSART: I would like to ask Mr. Stead two or three questions. Take the matter of the consent of the municipalities. I believe Mr. Stead has said that there is no problem where there is only one municipality. There may be a problem arising in the future where more than one municipality has any interest in the development of a harbour. Now, Mr. Stead has also referred to a partnership, and the point has been brought up that it is a partnership between the federal Government and the municipality. Would you not agree that it would make sense, even in a situation where it might cause some trouble, to have the interest of the municipality protected by a provision requiring its consent before there was any change in status of an act which it now has? These municipalities in the schedule now have certain rights that they have obtained under an act of Parliament. Does it not make sense that before those rights are taken away from them that their consent should be given? That is my first question.

Senator ROEBUCK: May I interrupt before that is answered. Their rights are taken away from them by Parliament. You see, their rights may be taken away from them now by order in council.

Senator McCUTCHEON: Only if we authorize the order in council.

Senator CROLL: They cannot act without our authority.

Senator ROEBUCK: The authority is in the bill. I am asking Senator Grosart to elaborate upon what he is saying. We always reserve the right, of course, to amend any bill. Parliament is supreme in that, but we are giving now a right to the executive to repeal an act. I think if there is going to be a repeal of an act without consent then they should come back to us and obtain an act of Parliament.

Senator GROSART: I would agree with that. I think the fact of the matter is that under this bill the right to take away whatever rights now exist with respect to a municipality such as Oshawa is given, in this case, to two harbour commissions. If they decide so they can change the whole status of Oshawa with respect to the present act.

I mention the word "interest". Mr. Stead, you have said that the obligation of the city ceases at this initial point when the harbour commission is set up. That may be so, but does not the interest of the municipality continue? First of all, you may say the interest in revenues is small, but in the case of Oshawa there will be revenues going to that harbour commission from property of the City of Oshawa, and as it stands now it remains the property of the City of Oshawa. It has title to it.

Senator McCUTCHEON: This bill would not change that one iota.

Senator GROSART: It will.

The ACTING CHAIRMAN: I think the point Senator McCutcheon makes is that if Oshawa retains the title to the property it can make a new deal with the harbour commission under any terms it likes.

Senator McCUTCHEON: This bill does not take away the property of the City of Oshawa.

Senator GROSART: No, it makes an essential change in the status of its interest.

Senator McCUTCHEON: They still have one representative.

Senator GROSART: They have their rights under an act of Parliament to which they have consented.

Senator McCUTCHEON: Which differs very little from this bill.

Senator GROSART: Whatever you say along those lines does not affect the basic principles that the municipality, in my view, has a right to consent to any change.

Senator MACDONALD (Brantford): Did not the representative of Oshawa approve this bill the other day? They did not raise the objections that you are now raising.

Senator GROSART: There was no reason for raising those objections because there was nothing being taken away from them. Whatever rights they had someone may regard them as inconsequential, but they are entitled to regard them as rights that have been given to them under this act of Parliament, and that they are consequential rights. All I am saying is that before the status is changed it makes sense that their consent should be obtained.

Senator CROLL: I cannot resist asking you one more question. In 1960 the City of Oshawa obtained the passage of a bill here. We did not write that bill. They wrote it. They brought it to us and we passed it. That is normal. With respect to the city's status, that is not changed one iota. It is the same as it was in 1960 under their own bill. What is proposed here is a common bill, but it does not change that. If we bring the municipality into the picture, Senator Grosart, then the department will have to deal with half a dozen or a dozen members of the municipal council, which council may very well change its views. There is a political issue here that may cause some changes and which is outside of our scope entirely. We are dealing with a commission in which the city has an interest, but how far we can protect them any more than we have done is a matter of some question. Mr. Malloy has said that the co-operation he has received from the department has been everything he desires.

Senator GROSART: So I am informed. There has been no objection from the City of Oshawa to any of the administrative arrangements.

Senator MACDONALD (*Brantford*): I think you are speaking to the general principle of the bill.

Senator GROSART: Yes, I am referring to any municipality. I recognize the problem that Mr. Stead has brought up, but my feeling is that these local interests are just as important as the federal interests. I have always believed that. I believe that government is better the closer it is to the people, and particularly an elected government. I cannot see where it makes sense to take away whatever rights that may exist, even to give them something better, and even if they admitted it was something better, without the consent of the municipality. This is co-operative federalism, as I said the other day, so let us extend it down to the level of the municipalities. If there are objections and if the municipalities cannot get together then is not this recognition of some kind of interest that deserves consideration? That is my feeling.

Now, the second point is that someone has asked what right is being taken away from them. The answer is that it is clearly the right they now have to access to the books. They have that right now. Honourable senators, what is being taken away here is a specific right. There may be other things; I do not know. But, certainly I do not understand why the principle should now be developed that if their money interest in this is only very small and very old that it should, therefore, cease to exist. In fact, the smaller it is I suggest the greater our obligation to protect it.

The CHAIRMAN: Thank you. Are there any other comments on the Oshawa situation? Do you desire to hear Mr. Stead on any of the points raised by Senator Grosart at this time?

Mr. ROEBUCK: If Mr. Stead wishes to make a point. It is wide open if you do.

Mr. STEAD: I entirely agree with Senator Grosart on his point about elected local government. Indeed, the whole purpose of the commission structure we are so concerned to improve the reputation and independence of is to bring the control of these significant harbours closer to the people they serve. This is the objective of the whole policy, and anything I say I would ask you to read in that context.

Senator ROEBUCK: In that case, if it is your desire that it shall be democratic in that way, why not make it appear so, as well as your administration making it so?

Mr. STEAD: That is a very good point. May I continue, and I think I will try to cover that.

Let us examine the nature of the partnership that I have referred to in the past, and that Senator Grosart is now referring to. After the harbour commission is set up the federal part of the responsibility for the harbour itself is delegated to the harbour commission. The partnership is not so much within the harbour commission itself but as between the harbour commission and the city. The city has to provide services to the harbour commission and all the other people in this area of jurisdiction in the way of police protection, fire protection, making sure road ends in the city fit in with harbour planning, and so on. This is the nature of the partnership, as I see it, between the harbour commission and the city. It does not relate so much to financing of the commission as to the relations between these two bodies, and your city representative is, if you like, a sort of liaison that recognizes that continuing partnership.

May I add one more point I hope contributes to your thinking? Regardless of whether the city or the federal Government—and the various acts are different—has the right to take surpluses, I am not aware of any case in which either party has ever exercised this right. Indeed, there have been cases where we have had to adopt a rather loose definition of "working capital" in order

to leave the surpluses in the commission. This is corrected by this bill, which allows the minister to determine suitable reserves for future development so that those funds can be left with the commission. In other words, the purpose of the amendment of the clause in this act which gives more financial independence to the commission than the old one is to enhance their independence and to enable them to hang on to revenues they have earned so they may be applied to harbour purposes.

Senator GROSART: If for various reasons you find it impossible to further amend the act to provide for consent in all cases, in the context we have been discussing, would you give consideration to providing for consent where there is a single municipality, and then perhaps you could put in some time-breaking clause in respect of others? In other words, there would be the principle of consent, and I can see the reason for protection, where, for example, there is a clause saying, "If there is not agreement between municipalities within a reasonable length of time, then you will proceed by by-law of the existing harbour"—at least, you would be giving us some thing, and we would appreciate it.

Senator CROLL: Would you like to bring this thing to a head, and see how the committee stands on it? I would like to move that further consideration of this bill be deferred.

Senator ROEBUCK: I will second that.

The ACTING CHAIRMAN: Senator, do you mind holding your motion for a moment? There are some things we have to deal with. Senator Molson had a question that has been deferred, and because of the rather contentious nature of the proceedings of this committee I think, as chairman, I should complete the record by telling you about telegrams we have here.

First I will hear from Senator Molson, if that is satisfactory, and then perhaps I might proceed to these telegrams. Then we will have the motion.

Senator MOLSON: Mr. Chairman, I would like to ask Mr. Stead this question: Is there any possibility that some of the harbour commissions not under this schedule might at some future date be at a disadvantage in comparison with those under this schedule? For example, if the day ever came when the harbour commissions were all extremely prosperous, and if the department started charging all the costs of those harbours to the harbours, I am wondering whether at that stage there might not be some disadvantage to the individual harbours, if they were not under this act.

Mr. STEAD: I cannot think of a case where a policy decision to charge or not to charge would be affected by the legislation, off hand. I think there are certain advantages to the bill, and the people from Oshawa have been good enough to point out one or two. I hope that on mature consideration some of the at least more recently set up harbour commissions would prefer to come under this, and some of the older ones too, when they have had time to think about it. Therefore, I would prefer to leave them in the schedule, in their own interest as well as ours.

Senator MOLSON: I am not talking about the policy being decided by this bill, but at some future stage if the policy became general, the charging of the costs in connection with all the harbours to the individual harbour commissions, and that perhaps at that stage it is possible that some harbours might be better off under the schedule than those that are not.

Mr. STEAD: No. The answer to that is, "no". We have such a policy now. The policy for construction of new works, which is where the federal finances are now being brought to bear to improve the harbour facilities, is already based on a sliding scale. This has been in effect for some years now, so that when a harbour commission comes to us and says, "We would like another wharf, but

we have not enough money to pay for it. Here are the economics of the wharf, as we understand it," we check the information and, if we agree, the officials make a recommendation to Government that we pick up the slack they are unable to finance through the revenues directly attributable to that wharf after it is built having regard to their overall financial position. As the harbour commission grows and is able to take more of the financial load for new construction, it is asked to do so. In the national interest the federal Government only dubs in the amount by which the harbour commission is unable to finance its own improvements.

Senator ROEBUCK: Who sets the rates?

Mr. STEAD: The interest rates?

Senator ROEBUCK: No, when a boat comes in it pays something. I suppose that is where you get your revenue?

Mr. STEAD: They are set, in the first instance, by by-law of the harbour commission, approved by the Governor in Council. We have been encouraging the harbour commissions to modernize their rates structure, so what we are doing ourselves in the federal Government is being done by way of encouragement and not by order, with a view to getting a range of rates across the country that is in the same general area having regard to the different services performed by different harbours and their competitive requirements.

Senator ROEBUCK: Is there competition between harbours?

Mr. STEAD: We try to avoid competition of rates, except to the extent rates reflect differing services performed in different harbours.

Senator HOLLETT: Is there any great objection to excluding the city of Hamilton from this bill, just as we have excluded Toronto? We have heard the mayor state what is happening there with regard to a certain motor car company. If the department had not great objection to acting in the same way with Hamilton, that would meet the objection. The city of Oshawa has no very great objection, and we have not heard any other great objection. Would the department have any objection to the city of Hamilton being treated in the same way as the city of Toronto?

Mr. STEAD: I would be afraid that if you start widening the exceptions you end up with no national bill, and I think there is some merit in treating all harbour commissions along the same general lines.

Senator HOLLETT: The bill refers to new harbours.

Senator ROEBUCK: There are only 11 harbours in the schedule.

Senator HOLLETT: Now there are only 10. To make it nine would not alter the bill. I agree the bill has great merits generally, but when city councils have been more or less active in these things, we ought to hear their objections.

Mr. STEAD: The other feeling I have is, apart from the precedent problem which perhaps unduly worries civil servants, I think when this bill is perhaps more fully comprehended there may be a wish on the part of some of the cities who have suggested dropping out that they should be brought under it. Then there would have to be another act of Parliament to amend this bill. This will produce delays. This bill we would like to have seen enacted nine or ten months ago because of some urgent matters awaiting its passage. But inevitably the legislative process involves some delay, and therefore we would prefer to see them provided for without having any intention of ramming the bill down the throats of any individual city. You cannot put everything in legislation, and we need the co-operation of the cities. My minister has said, and I repeat it, that it is inconceivable to us that any Government would ram down the throats of any one city a bill they don't understand and don't want. If we do as suggested, it would be necessary eventually to amend it by a new act of Parliament.

Senator CROLL: Would you agree, Mr. Stead, that the consent of the municipal council would substantially meet Hamilton's position?

Mr. STEAD: It could do that, sir. I think I would have to consult my minister before agreeing with that.

Senator GROSART: Wouldn't it give Hamilton the essential protection they are asking for, because if the consent clause was put in they would continue in their present status until they gave consent to change it.

Senator MACDONALD (*Brantford*): I think we have to hear further representations from the city of Hamilton.

The ACTING CHAIRMAN: The mayor indicated that he would like to say another word. Is it your desire to hear him now?

Some Hon. SENATORS: Agreed.

Mayor COPPS: I wanted to say a word in the interest of time. I just wanted to say we have had wonderful co-operation from the department and from Mr. Stead in explaining the terms of this bill to us, but the reaction in our city has been one of great concern about the bill. Our local newspaper is quite disturbed. They refer to it as centralization and nationalization. I am not suggesting this is the intent, and it may be in due course there will be sufficient benefits in the bill to make it desirable for us to request to be included. But because it is designed for new harbours it was not, in our submission, intended to cover Hamilton. However, in order to facilitate the department in getting the amendments, and to cover the younger harbours, would it not be better to exclude Hamilton for the time being and so put Mr. Stead in the position to proceed with it, and it would give us the time to assess the effects of it, and if we see fit to apply later to be included we could do so.

The ACTING CHAIRMAN: Thank you very much. Now I want to deal with some telegrams with reference to the hearing we have had this morning, and for the purpose of the record I want to read in the various comments made by these various bodies. Our telegrams to these various bodies asked for an acknowledgment, and we have some acknowledgments here. They come from the following groups. The first is from the secretary of the North Fraser Harbour Commissioner. That probably should be commission.

Senator ROEBUCK: Did they do no more than just acknowledge receipt of the telegram?

The ACTING CHAIRMAN: They just acknowledged receipt. The second is from the Hamilton Harbour Commissioners. The third is from Windsor Harbour Commission. The fourth is from Hamilton Harbour Commissioners. The fifth is from P. Maffeo, Mayor of Nanaimo. The sixth is from Mayor Beth Wood of New Westminster. The seventh is from Lyman A. Gifford, Mayor of the City of Oshawa, who was here this morning. And the next one is from Thomas M. Rundle, who is also here this morning. Then we have one from J. McEwan of the harbour commissioners, New Westminster.

Then in addition to those we have the following telegrams. The first is from A. McLean Haig, Mayor of Belleville, acknowledging our telegram and winding up with the words "No objection". Then there is one from J. Dunham, secretary, Nanaimo Harbor Commissioners, acknowledging receipt of our telegram—"No representation from this commission Stop In favor of bill". Then we have one from L. Jordan, Mayor of Port Alberni, which says, "City of Port Alberni have no objection to Bill S38". The next one is from Port Alberni Harbour Commissioners, D. P. O'Brien, Chairman, and it says in part, "Port Alberni Harbour Commissioners have no objection to Bill S Thirty-eight".

Now I also have the following telegrams: From Mayor Stephen Juba of Winnipeg. This says, "Please advise purpose Senate Committee on Transport and Communications called for Tuesday December 17th next at 10.30 AM as it refers to City of Winnipeg."

Senator ROEBUCK: Are you going to tell him the purpose?

The ACTING CHAIRMAN: This is an acknowledgment of the notice.

Senator ROEBUCK: He is asking now what the purpose was. What are you going to do about that?

The ACTING CHAIRMAN: That is for the committee to decide. There is an answer coming. Perhaps I could come back to that, senator, when we finish this.

Then there is one from James E. Watson, Q.C., city solicitor for Windsor. This says, "I wish to confirm that the city desires to confirm position taken in my letter of November first, 1963, and the subsequent letter of November 14th to W. J. Manning, Director, Marine Works, Department of Transport." I may say I haven't seen either of these communications. From the Mayor of the City of Vancouver—"Vancouver will not be represented at the Senate Committee meeting re Bill S38 Harbour Commissioners Act."

Now at the opening of this session I read into the record a telegram from the secretary of the Winnipeg and St. Boniface Harbour Commissioners. Shall I read that telegram again to see if Mr. Stead has any comment to make on it?

Some Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: It reads:

Reply your telegrams Mayor Guay and Winnipeg and St. Boniface Harbour Commissioners re consideration of Bill S38 at 10.30 A.M. Tuesday December seventeenth. Commissioners Mayors Guay, Kushner and Alderman Claydon will be in Ottawa that day with delegation to meet with Prime Minister at 10.00 A.M. re TCA Stop Request hearing before Senate Committee on Transportation and Communication 1.30 P.M. December seventeenth next.

Does the committee desire to take any action on this telegram?

I have a further telegram from N. D. Eastman, secretary, The North Fraser Harbour Commissioners, which says:

Re Bill S38 while this bill contemplates that commissions will not be brought under it at present without the concurrence of the majority of commissioners we are of the opinion that it paves the way for an amendment of section thirty at some future date bringing all commissions under the bill. Our specific objections are:

1. Section four would permit a change of boundaries of the North Fraser by order in council

2. Section eight would produce in effect a wage freeze by requiring ministerial consent to the fixing of the salary for the chief executive officer of the commission

3. Section ten would restrict powers presently held by North Fraser as to acquisition of land

4. Section fifteen would in effect turn the commission into a taxing body for the Dominion Government and contains inherent danger that once implemented there would be pressure on commissions to raise larger revenues. They would then become part of the general federal tax structure. North Fraser would be willing to send a representative to appear before any further hearing of the Senate committee of this bill if the Senate wishes them to be heard.

Do you wish to hear Mr. Stead on this telegram?

Senator ROEBUCK: That is an important telegram.

Senator LAMBERT: Mr. Armstrong is getting another one.

Senator MACDONALD (*Brantford*): Mr. Chairman, are we in a position to deal with this bill now?

The ACTING CHAIRMAN: I am in the hands of the committee.

Senator LAMBERT: There is a motion made by Senator Croll.

Senator ROEBUCK: Senator Croll moved to defer...

The ACTING CHAIRMAN: I think the effect of Senator Croll's motion might be this, that the bill be not dealt with further at this session.

Senator ROEBUCK: I think that that would be very wise.

The ACTING CHAIRMAN: What is the wish of the committee?

Senator MACDONALD (*Brantford*): Mr. Chairman, as I see it there would be no chance of getting this bill through the other house this session even if we did pass it today. On the other hand, I do not see how we can pass it in view of the representations that have been made. It is my feeling that our only course is to defer consideration of it.

Senator POWER: I would suggest that we simply adjourn this meeting until some other day. Nobody in that way is defeating the bill. Nobody is offended, but it will not be in effect.

Senator ROEBUCK: The only trouble with that is that the municipalities, especially the one I referred to earlier in the day, are entitled to know what we are going to do if we are not going on now. I know it cannot go on, but they do not know that. There were two representatives that I mentioned earlier, namely, the mayor of Coburg and the reeve of Northumberland County. They were making ready to start to drive to Ottawa at 2 o'clock this morning when they received some information that the bill would not be passed until next session, and so they did not come.

Senator MACDONALD (*Brantford*): I do not know where they would get that information from.

Senator ROEBUCK: It would ease their minds if they knew we were deferring this until the next session.

The ACTING CHAIRMAN: Gentlemen, I have two motions. I have a motion and an amending motion. I have a motion that the bill be not proceeded with further at this session from Senator Croll. Senator Power moves an amendment to the effect that the committee adjourn *sine die*. What is your pleasure. I will take a vote on the amendment. Those in favour of the amendment?

The CLERK OF THE COMMITTEE: There are 8 in favour.

The ACTING CHAIRMAN: Those against the amendment? I declare the amendment carried.

The committee is adjourned *sine die*.

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